

# The Gazette of India



## EXTRAORDINARY

### PART II—Section 3

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#### ELECTION COMMISSION INDIA

#### NOTIFICATIONS

*New Delhi, the 26th February, 1953*

**S.R.O. 392.**—WHEREAS the election of Shri Surajnarayan Singh, as a member of the Legislative Assembly of the State of Bihar from the Gogri Constituency of that Assembly has been called in question by an Election Petition duly presented under Part VI of the Representation of the People's Act, 1951 (XLIII of 1951), by Shrimati Sumitra Devi Mandal W/o Shri Ganesh Lal Mandal, Village Pachaut, P.O. Pirnagra, Deori, P. S. Chautham, District Monghyr (Bihar);

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, BHAGALPUR

ELECTION PETITION No. 114 OF 1952

ELECTION CASE No. 3 OF 1952

Mandal Sumitra Devi W/o Ganesh Lal Mandal, village Pachaut, P.O. Par-nagra Deori, P. S. Chautham, District Monghyr—Petitioner.

*versus*

1. Sri Surajnarain Singh S/o Kashi Prasad Singh of village Borna Tola Kaithi, P.O. Chautham, P. S. Chautham, District Monghyr.
2. Sri Ramdeo Mahton S/o Sri Jugal Prasad Mahto, village Thatha, P.O. Mansi, P. S. Chautham, District Monghyr.
3. Sri Brahamdeo Sharma S/o Pheku Sharma, village Kolbara Tola Tehai, P.O. Salarpur, P. S. Parbatta, District Monghyr.
4. Sri Jamaluddin S/o Kamaluddin, deceased, village Muski, P.O. Muskipur, P. S. Gogri, District Monghyr.
5. Sri Basdeo Ram S/o Bhudhar Mal Kheton, village Jamalpur, P.O. Muskipur, P. S. Gogri, District Monghyr.

6. Gauri Shankar Misra S/o Pyare Lal Misra, village Siri Sirnea, P.O. Gogri, P. S. Gogri, District Monghyr.

7. Sri Dip Narayan Singh S/o Ram Sahay Singh, village Dharanpur Tola Temba, P. S. Gogri, P.O. Maheskut, District Monghyr—*Respondents.*

**FOR PETITIONER:**

Sri Udai Narain—*Advocate.*  
 Sri Hirday Narain—*Pleader.*  
 Sri Satyanarain Prasad—*Pleader.*

**FOR RESPONDENT No. 1:**

Sri Ranjit Sinha & Sri Niroj Chandra Ganguly—*Advocates.*  
 Sri Haldeo Narain & Sri Parmeshwari Prasad Verma—*Pleaders.*

**PRESENT:**—

Sri K. Sahai, Barrister-at-Law—*Chairman.*  
 Sri Umakanta Prasad Sinha, Retired District & Sessions Judge and  
 Sri Rajeshwari Prasad, Advocate—*Members, Election Tribunal.*

**JUDGMENT**

Petitioner Sumitra Devi Mandal was a candidate of the Congress party for election to the Legislative Assembly of the State of Bihar from Gogri Constituency. Surajnarin Singh, respondent No. 1, was the Socialist candidate and the other respondents were Independent candidates for election from the same constituency. Respondent No. 1 secured 8,194 votes, the petitioner secured 6,634 votes, Ramdeo Mahton, respondent No. 2, secured 2,124 votes and the other respondents secured varying numbers of votes. Respondent No. 1 was declared elected as the number of votes polled in his favour was the largest.

The petitioner prays for a declaration that the election of respondent No. 1 is void and she has herself been duly elected or, in the alternative, for a declaration that the whole election is void. Her case, in short, is that a declaration of appointment of an election agent did not accompany the nomination papers filed by Ramdeo Mahton, respondent No. 2, as required by section 33(3) of the Representation of the People Act, 1951, that his nomination papers were, therefore, improperly accepted and that the result of the election has been materially affected thereby. Her case further is that one of the polling booths was scheduled to be located in the Dumri U.P. School, but it was actually located in the U.P. School at Pansalwa which is at about two miles from Dumri with the result that many voters could not exercise their franchise. She also alleges that the Electoral Roll of residents of village Chak Yusuf was not received at the polling booth in village Chandpur Dahogna until about 3-30 P.M. and that a large number of voters of that village could not, therefore, poll their votes. Her case also is that there was no free election by reason of the fact that respondent No. 1 was guilty of major corrupt practices of bribery and undue influence and voters were taken on his behalf on Jeeps to the booths at Pachaut, Samaspur and Sonbarsa and rowdyism was created by his workers at Pachaut, Usri and Sonbarsa booths so that many voters were scared away and could not vote. One other allegation made by her is that the return of election expenses filed by respondent No. 1 contains several illegal items of expenses.

The case of respondent No. 1 is that there were declarations of appointment of an election agent with the nomination papers filed by Ramdeo Mahton, that he had appointed himself as his election agent in those declarations, that after the result of the election was announced, he tampered with his nomination paper in collusion with the Congress party candidate by cancelling the appointment of himself as his election agent and that his nomination papers were properly accepted at the time of scrutiny. His case further is that village Pansalwa is a tola of Dumri, that the U.P. School is situated in tola Pansalwa and not in village Dumri, that no voter was misled and that no one was prevented from exercising his franchise. According to this respondent, all voters of village Chak Yusuf, who desired to poll their votes, voted at the booth where voting took place throughout the day fixed for the purpose. He denies that he or his workers have been guilty of any corrupt practice and he further alleges that he took all reasonable means for preventing the commission of corrupt or illegal practices at the election. He asserts that there is no illegal item of expense in his return of election expenses and alleges that the election petition filed by the petitioner is not maintainable and is liable to be thrown out on several grounds.

Ramdeo Mahton, respondent No. 2, has filed a separate written-statement. He alleges that he had originally appointed himself as his election agent in the declaration but he subsequently penned through his appointment as his own agent because he *bona fide* thought that it was not necessary for him to make a declaration when he was not appointing any one else. He has supported the petitioner's case in some other respects also. Respondents Nos. 3 and 7 have also filed separate written-statements in which they have generally supported the petitioner's case. None of these three respondents has, however, appeared at the hearing to contest the case. The other respondents have not even filed any written-statement. Respondent No. 1 is the only contesting respondent.

The following issues have been framed—

**Issues**

1. Is the Election petition maintainable?
2. Was the Election petition presented by a properly authorised person on behalf of the petitioner?
3. Is the petition bad for defect of necessary parties?
4. Is the petition barred by limitation?
5. Is the petition signed and verified according to law?
6. Was there improper acceptance of the Nomination papers of any of the Respondents as alleged and, if so, has the result of the Election been materially affected thereby?
7. Did Shri Ramdeo Mahton, in collusion with the Congress Party candidate, tamper with his nomination paper and cancel the same after respondent No. 1 was announced as the successful candidate?
8. Were the ballot boxes bearing Serial Nos. 34, 35, 37, 38, 40, 42 and 43 found to have contained two different symbols—one outside and the other inside—and was the method of counting of ballot papers of different ballot boxes illegal? If so, has the result of the election been materially affected thereby?
9. Did Respondent No. 1, his agents, or any other person with the connivance of Respondent No. 1 or his agents commit corrupt practices specified in the election petition? If so, is the election of Respondent No. 1 void?
10. Has the result of the election been materially affected by improper refusal of votes, by the reception of votes which were void and also by non-compliance with the provisions of law? If so, is the election of the returned candidate void?
11. Were the voters of the petitioner misled and prevented from exercising their right of franchise as the polling was not held at the Dumri School as notified?
12. Did Respondent No. 1 take all reasonable means for preventing the commission of any alleged corrupt and illegal practices at the Election?
13. To what relief or reliefs is the petitioner entitled?

**Findings**

**Issue No. 2.**—Respondent No. 1 has alleged in paragraph 27 of his written-statement that "the person alleged to have presented the election petition in this case had no authority to do so". The endorsement made by the Assistant Secretary of the Election Commission on the election petition filed by the petitioner shows that the petition was presented by Sri Rajendra Prasad Yadav who had been duly authorised in this behalf by the petitioner. The petitioner has examined herself and she is P.W. 18. She says that she authorised Rajendra Prasad Yadav in writing to file the election petition on her behalf before the Election Commission at Delhi. Under section 81(2)(a)(ii) of the Representation of the People Act (which will be referred to hereinafter as the Act in this judgment), an election petition is deemed to have been presented to the Election Commission when it is delivered by a person authorised in writing in this behalf by the person making the petition. In view of the petitioner's evidence and the endorsement of the Assistant Secretary on the election petition, we have no doubt that the provision of law was strictly complied with and that the election petition was duly presented by Rajendra Prasad Yadav who was authorised by the petitioner in writing to present it. We, therefore, answer this issue in the affirmative.

Issue No. 3.—Admittedly Kamleshwari Prasad Gupta, Ghanshyam Sinha and Titar Mandal were duly nominated candidates for the constituency in question but they withdrew their candidatures within the time fixed for the purpose. Thus they did not contest the election. Section 82 of the Act provides that a petitioner shall join as respondent of all the candidates who were duly nominated. It is clear that the petitioner has not strictly complied with this provision and the question which we have to consider is what the effect of this non-compliance would be.

All those candidates who contested the election were undoubtedly interested in its result. They must also be deemed to be interested in the result of this case. Hence they are all necessary parties and all of them have been impleaded in this case. The candidates who withdrew their candidatures within the time fixed for withdrawal cannot be deemed to have had any interest in the result of the election except as electors. The law does not require that all electors should be made parties. In our opinion, therefore, such candidates are only proper parties.

Neither section 82 nor any other section provides the effect of non-joinder of proper parties. Section 85 provides for the dismissal of an election petition by the Election Commission for non-compliance of the provisions of certain sections, but section 82 is not one of those sections. Section 90 provides that the Tribunal shall try an election petition, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. There is nothing in this section or in section 98 which provides for the decision of the Tribunal to show that an election petition must be dismissed simply because all duly nominated candidates, whether they are necessary or merely proper parties, have not been impleaded as parties. In cases tried under the Civil Procedure Code, a distinction is ordinarily made between necessary parties without whom a decree cannot be effective and proper parties who are to be joined only as a matter of convenience or expediency. Order 9 of that Code provides that no suit shall be defeated by reason of non-joinder or mis-joinder of parties.

On a consideration of all that we have said above, we are of opinion that the election petition filed by the petitioner ought not to be dismissed for non-compliance with the provisions of section 82 in respect of only those candidates who could not have been interested in the result of the election as candidates and who cannot be interested in the result of this case. This result follows especially because of the provisions of Order 9 C.P.C. which, in our opinion, is applicable to this case under section 90 of the Act. We have expressed the same view relating to the effect of non-joinder of parties in our order dated 12th January 1953 on preliminary issues raised in the case of Bakhtarpur-cum-Chautham constituency of the Legislative Assembly of the State of Bihar. For the reasons given above, this issue is answered in the negative.

Issues Nos. 4 and 5.—The election petition was filed before the Election Commission on 8th April 1952. It has not been argued that the petition was filed beyond the period of limitation prescribed under Rule 119 of the Representation of the People Rules.

There is a verification at the foot of the election petition and there is another verification at the foot of the list of particulars of alleged corrupt and illegal practices. It appears that the petitioner put her signatures on 7th April 1952 under the two verifications but she did not put her signature on that date just below the election petition and above its verification nor did she put her signature just below the list of particulars and above its verification. On this defect being pointed out perhaps by the Election Commission, the petitioner put her signatures at the foot of the election petition and the list and above the verifications on 31st May 1952. It has been argued that the election petition should be deemed to have been presented to the Election Commission on 31st May 1952, the date on which the petitioner signed her election petition and the list of particulars. A petitioner is required under section 83 of the Act to sign his or her petition and the list of particulars and to verify them. It seems to us that this provision has been made in order to ensure that the petitioner does not try to absolve himself or herself of responsibilities for the allegations made by him or her in the petition and the list by pleading want of knowledge. In our opinion, this purpose was sufficiently served when the petitioner in this case put her signatures below the verifications on the petition and the list. Does the provisions of section 83 were substantially complied with on 7th April 1952. Hence the election petition must be deemed to have been properly presented on 8th April 1952. We are, therefore, not prepared to accept the argument that it should be deemed to have been presented on 31st May 1952 simply because the petitioner removed some technical defects on that date.

It has further been argued that section 83 of the Act requires the petition and the list to be verified in the manner laid down in the Code of Civil Procedure but the verifications made by the petitioner on 7th April 1952 have not been made in that manner. Rules 14 and 15 of Or. 6 of the Code of Civil Procedure correspond to the provisions in section 83 of the Act for signing and verifying election petitions and the lists which must accompany them. It is well settled that though the word "shall" has been used in rules 14 and 15 of Or. 6 the provisions made in them are not mandatory and that proper verification may be made even at a later stage of the suit after the expiry of the period of limitation. The petitioner filed proper verifications of the election petition and the list on 31st May 1952. These verifications are in accordance with the requirements of Or. 6 r. 15. In our view, the fact that proper verifications were made after the expiry of the period of limitation cannot be held to be a fatal defect. We have taken the same view in our judgment dated 24th December 1952 on preliminary issues in the case of Monghyr North-East Parliamentary constituency of the House of the People. We, therefore, hold that there has been substantial compliance with the requirements of section 83 of the Act relating to signing and verifying of the election petition and the list of particulars.

\* In view of what we have said above, we answer issue No. 4 in the negative and issue No. 5 in the affirmative.

*Issue No. 1.*—The only points raised against the maintainability of the election petition have already been discussed on issues Nos. 2 to 5. As it has not been argued that the election petition is not maintainable for some other reason, we answer this issue in the affirmative.

*Issues Nos. 8 and 10.*—These issues have not been pressed. At illegality in the method of counting the ballot papers or any of the defects mentioned in these issues have been pointed out. Both these issues are, therefore, answered in the negative.

*Issue No. 9.*—The petitioner has alleged (1) that voters were carried to three booths at (a) Pachaut, (b) Samaspur and (c) Sonbarsa on jeeps on behalf of respondent No. 1 (2) that rowdyism was created by the workers of respondent No. 1 at (a) Pachaut, (b) Usri and (c) Sonbarsa and that (3) the return of election expenses filed by respondent No. 1 shows some illegal items. We proceed to consider these allegations one by one.

(1)(a).—P.Ws. 1 and 2 say that they saw voters being taken in the Jeep of respondent No. 1 to the booth at Pachaut on the second day of polling there. P.W. 1 admits that he cannot give the name of any of those voters nor that of the driver and that he did not report the matter to any officer. P.W. 2 says that he recognised only Anandi Singh of Pachrasi out of those who came in the Jeep and that he did not inform anybody about voters being taken to the booth in a Jeep. Anandi Singh of Pachrasi is R.W. 12 and he says that he did not take any voter in the Jeep of respondent No. 1 to Pachaut polling booth. Nothing has been elicited in his cross-examination to show that he is unreliable or interested. R.W. 14 was the polling Agent of respondent No. 1 at Pachaut. He denies that any voter was taken to the booth in the Jeep of respondent No. 1. R.W. 15 is respondent No. 1 himself. He says that no voter was taken to any booth on a Jeep to his knowledge. In view of the defects in the evidence of P.Ws. 1 and 2 we prefer the evidence adduced on behalf of respondent No. 1 and we hold that no voter was taken on a Jeep to the booth at Pachaut.

(1)(b).—P.Ws. 4, 10 and 14 say that they saw voters being taken in the Jeep of respondent No. 1 to the polling booth at Samaspur. P.W. 4 admits that he did not recognise any of the voters who came in the Jeep and that he saw the Jeep with voters in it at about 5 or 7 laggas to the east of the gate of the booth. We do not consider it probable that any candidate or his workers could dare take voters in his Jeep so close to a polling booth. P.W. 10 admits that he did not identify any of the occupants of the Jeep and that he did not inform any one about voters being taken in the Jeep of respondent No. 1. P.W. 14 admits that he did not identify any of the voters or the Socialist workers who used to come in the Jeep. In our opinion, these witnesses must have identified at least one or more voters if they had actually seen voters being taken to Samaspur in the Jeep of respondent No. 1. P.W. 14 says that he gave information in this connection to a Congress worker 4 or 5 days later. If these witnesses had seen voters being carried in the Jeep of respondent No. 1, we think that they would have given information to officers at the booth.

P.W. 13 says that he went to Samaspur polling booth in the Jeep of respondent No. 1 in order to cast his vote. He states that the Jeep of respondent No. 1 had a red flag flying on it. It is highly improbable that voters would have been carried in a Jeep with the Socialist flag flying on it.

R.Ws. 9 and 11 say that no voter was carried to the Samaspur polling booth on the Jeep of respondent No. 1. We prefer the evidence of these two witnesses because of the defects which we have pointed out in the evidence of the petitioner's witnesses. Hence we hold that no voter was taken to Samaspur booth in the Jeep of respondent No. 1.

(1) (c).—P.W. 3 says that he saw some voters being taken to the booth at Sonbarsa in the motor car of the socialist party. P.W. 6 says that he saw voters being carried to the said booth in the Jeep of respondent No. 1. P.W. 3 says that the voters were residents of Kaithi, Doga and Barni but admits that he could not recognise them. If he could not recognise them, it is difficult to see how he is able to say that they were men of such and such villages. P.W. 6 admits that he cannot give the name of any of the voters. In these circumstances, we consider them to be unreliable. R.Ws. 10 and 13 have said that no voter was taken to Sonbarsa booth in any Jeep car. As we prefer the evidence of these two witness, we hold that no voter was taken to Sonbarsa booth in the Jeep of respondent No. 1.

(2) (a).—P.W. 1 says that on the second day of polling at Pachaut some persons in red caps made hulla outside the enclosure, that the Police tried to curb them, that Brajraj Bahadur Singh (R.W. 14), the polling agent of respondent No. 1, came out of the enclosure asking voters who were inside it to follow him as the police were insulting voters, that the voters came out of the enclosure and became ready to use violence against the police, that the polling was stopped for about one hour and that about 200 to 250 voters who had come out of the enclosure at the instance of R.W. 14 went away without casting their votes. P.W. 2 says that voting was stopped on the second day of polling at Pachaut polling booth for a time on account of the hulla of the Socialist party, that polling remained suspended for about half an hour and that 150 to 200 voters went away without casting their votes. P.W. 19 was the Presiding officer at the polling booth at Pachaut. He has proved his diaries (Exts. 4 series) and has stated that the facts mentioned in them are correct. The diary (Ext. 4), dated 8th January 1952 shows that Brajraj Bahadur Singh (R.W. 14) incited voters by saying that the police were insulting them, that he told voters to follow him out of the enclosure, that the voters followed him outside and it appeared that they would take violent attitude and that the Presiding officer immediately stopped the polling and thereafter brought the situation under control with the help of the police. Even in his evidence, P.W. 19 has stated that he had to stop polling on 8th January 1952.

It appears from the diary (Ext. 4) and P.W. 19 also admits that Brajraj Bahadur Singh filed a petition on 8th January 1952 before P.W. 19, complaining about the voting of one Mosat. Chulhia. Ext. C is the petition. The complaint in it is that the Presiding officer made Mosat. Chulhia put her ballot paper in a case other than the box of respondent No. 1 with "Tree" as the symbol though she desired to put her ballot paper in that box. Ext. 8 is the alleged statement of Mosat. Chulhia which R.W. 9 claims to have written. As Mosat. Chulhia has not been examined the statement (Ext. 8) cannot be taken as proving the facts stated in it. The diary (Ext. 4) shows that on 8th January 1952 there were four tendered votes and eleven ballot papers were cancelled as they were found lying in the polling compartment. Had the Presiding officer desired to help any candidate by getting a voter to cast her vote in his ballot box, he could have easily put all the eleven ballot papers lying in the polling compartment in that box. Hence we do not consider the allegation relating to Mosat. Chulhia to be true. It seems to us that Brajraj Bahadur Singh (R.W. 14) made this complaint merely because he wanted to create some evidence against the Presiding officer who had found his (Brajraj Bahadur Singh's) behaviour to be objectionable.

P.W. 9 is a sub-inspector of police and he was incharge of Beldour police-outpost on 8th January 1952. The Presiding officer (P.W. 19) gave this witness a report (Ext. 2) complaining that Brajraj Bahadur Singh and other Socialist workers were creating disturbances. P.W. 19 also mentioned in this report the incident of 8th January 1952. After making enquiries, P.W. 9 submitted a report (Ext. 3) for prosecution of Brajraj Bahadur Singh and another under section 132 of the Act. It appears that cognizance was taken and Brajraj Bahadur Singh and another were put upon their trial on the basis of the report (Ext. 3). Ext. D is the judgment which shows that both the accused were acquitted.

Even though Brajraj Bahadur Singh and his co-accused were acquitted in the criminal case, it seems to us that there is no good reason to doubt the evidence of the Presiding officer (P.W. 19). We, therefore, hold that his evidence and the facts stated in his diary (Ext. 4) are true. There is thus no doubt that R.W. 14 and other workers of respondent No. 1 created some disturbances with the result that polling had to be suspended for some time. It has been argued that this amounts

to the corrupt practice of undue influence as defined in section 123 of the Act because there was indirect interference or attempt to interfere on the part of the workers and agent of respondent No. 1 with the free exercise of electoral right of some voters. There is nothing in the diary (Ext. 4) or in the evidence of P.W. 19 to show that any voter was actually prevented from casting his vote or that any voter went away without voting. P.Ws. 1 and 2 are the only witnesses who have said that voters went away without casting their votes but neither of these two witnesses has been able to give the name of any one of those voters. We are, therefore, of the view that their evidence on this point is not true. Although it is clear that some voters who were in the enclosure followed Brajraj Bahadur Singh (R.W. 14) when he asked them to come out of the enclosure with him, we are of opinion that this did not amount to interference with those voters' electoral right because the evidence shows that there was no intention to prevent them from voting but the intention was to agitate against the police. That being so, we hold that there was no interference, direct or indirect, with free exercise of any electoral right of any voter. The result is that we are unable to hold that respondent No. 1 or his agent has been guilty of the major corrupt practice of undue influence.

(2)(b).—P.W. 5 says that Socialist workers obstructed voters on the second day of polling at village Usri from proceeding to the booth, that he and other Congress workers asked those Socialist workers not to obstruct the voters, that the kurta of one of the voters was torn in the melee and that there was *lapar thapar* between the Socialist and Congress workers. According to him, 25 or 30 voters fled away on account of the disturbance and did not cast their votes. He claims to have made a written report (Ext. 1) at the police-station in this connection. It is significant that the allegation in Ext. 1 is that Manohar Yadav and Lodha Gope had forcibly snatched away a voter named Surjnaraian Yadav alias Sukan and not that 25 or 30 voters fled away due to disturbance without casting their votes.

P.W. 13 is the only other witness examined on behalf of the petitioner on this point. He says that 25 or 30 voters of his village were being obstructed by two Socialist workers, that two Congress workers came there, that there was *lapar thapar* between the rival workers, that the kurta of Sukal Yadav was torn in the disturbance and that some of the voters went away without casting their votes.

R.W. 5 is Manohar Yadav. He says that Sukal Yadav is his uncle and that he and Sukal peacefully polled their votes at Usri booth. It has been suggested to him that Sukal is not his uncle but he has denied the suggestion and we do not see any reason to disbelieve his statement that Sukal is his uncle.

We find it difficult to accept the allegation of P.W. 5 in the report (Ext. 1) that Manohar Yadav (R.W. 5) was one of those who forcibly snatched away Sukal Yadav when Sukal Yadav was his own uncle. We do not think that Sukal Yadav would have refused to listen to his nephew Manohar Yadav if the latter had merely asked him to vote in favour of a particular candidate.

In the circumstances mentioned above, we do not believe the evidence of P.Ws. 5 and 15 and we hold that no rowdyism was created by the workers or agent of respondent No. 1 at Usri.

(2)(c).—P.W. 3 says that three Socialist workers, namely, Anandi Singh, Jageshwar Singh and Suresh Prasad Singh were asking voters at Sonbarsa to vote for the Socialist candidate. The petitioner (P.W. 18) herself says that these three men were trying to pull voters this way and that at Sonbarsa, saying that they should either vote for the Socialist candidate or go home. She further says that she reported this matter to the Presiding officer who got these three men turned out. Ext. 4(d) is the diary of 16th January 1952 written by P.W. 19. It merely shows that the aforesaid three persons were behaving in a disorderly manner and that they were turned out of the polling station by the police. As the petitioner is an interested witness we are not prepared to believe anything beyond what is written in the diary [Ext. 4(d)]. Jageshwar Singh (R.W. 8) and Anandi Singh (R.W. 12) have denied that they interfered with voters at Sonbarsa. Even supposing that these two witnesses and Suresh Prasad Singh acted in a disorderly manner, that fact alone cannot show that they interfered with the electoral right of any voter. We, therefore, hold that there was no interference with voters at Sonbarsa polling booth.

2. It has been argued on behalf of the petitioner that the return of election expenses filed by respondent No. 1 shows that he paid remunerations to many more persons than the persons whom he could employ for payment under Rule 118 of the Representation of People Rules and schedule VI. On the other hand, it has

been argued on behalf of respondent No. 1 that merely fooding and travelling expenses were paid to the persons who are, by mistake, shown in the return of election expenses to have been paid remunerations. Although it has been said vaguely in the election petition that there are several illegal items of expenses in the return, no specific instance of illegal item has been mentioned in it. As payment of remuneration to a person whom a candidate cannot employ for payment amounts under section 123(7) to a major corrupt practice, full particulars should have been given in the list attached to the petition. In paragraph 16 of that list, however, the same vague words have been used as in the petition. Hence we are of the opinion that the petitioner cannot be allowed to press this point and we reject it.

For the reasons given above, this issue is answered in the negative.

**Issue No. 11.**—Ext. 9 is the polling chart and it shows that one of the polling booths in the constituency in question was to be located in Dumri U.P. School. Admittedly there is only a Lower Primary school in village Dumri proper and there is an institution consisting of an U.P. and M. E. Schools at village Pansalwa. There has been some controversy between the parties as to the distance between the schools at Pansalwa and the L. P. School at Dumri but there seems to be no doubt from the evidence that the distance between them by road is about two miles. P.Ws. 7 and 11 say that they went to Dumri school in order to cast their votes but, not finding a polling booth there, they could not exercise their right to vote. P.W. 11, however, admits that one has to pass Dumri in going to village Pansalwa. He further admits that he reached Dumri at about 2-45 P.M. and went rapidly from there to Pansalwa on being told that the polling booth was located in the U.P. School there. As the distance is only two miles, it is difficult to accept his statement that he arrived at the polling booth after polling was closed. In any case, P.W. 17 is the Headmaster of the Pansalwa M. E. School and he admits that Pansalwa is a tola of Dumri. R.W. 2 also says that Pansalwa is a tola of Dumri. He further says that it was proclaimed by beat of drum about 15 days before polling started at Pansalwa that polling would take place there. Irrespective of the fact whether this evidence relating to proclamation is true or not, we think that as Pansalwa is a tola of Dumri, the U.P. School which is located at Pansalwa may also be described by the name of Dumri U.P. School. As there is no U.P. School at Dumri proper, voters must have understood that polling would take place in the U.P. School located actually at Pansalwa. We, therefore, hold that no voter was misled.

There is no specific issue relating to the allegation about some of the voters of village Chak Yusuf not being able to poll their votes. We, therefore, proceed to consider the evidence relating to that allegation under this issue. Ext. 5(b) is the diary dated 22nd January 1952 of the Presiding officer of Chandpur Dahgana booth. It appears from this diary that the Electoral Roll of village Chak Yusuf was received at the booth at 3-35 P.M., that thereafter there was a rush of voters of Chak Yusuf and that the polling officers dealt with about a hundred voters in the last 25 minutes i.e. between 3-35 and 4 P.M. P.W. 8 says that voters of Chak Yusuf came in two batches, one of 25 or 30 voters at about 9 or 9-30 A.M. and the other of about 70 or 75 voters at about 12 or 12-30 P.M. that they could not cast their votes for want of Electoral Roll, that only 5 or 6 of them voted at about 3-45 P.M. and that the others went away without voting. He admits that he cannot give the name of any of the voters who did not vote although he claims to have himself brought the voters in two batches from Chak Yusuf to Chandpur Dahgana. He is an interested witness and we feel that his evidence is not reliable. R.Ws. 1 and 7 say that the Presiding officer used to tell the voters of Chak Yusuf before receipt of the Electoral Roll that they should wait as he had sent a man by car to Khagaria in order to bring the Electoral Roll, that all the voters kept waiting and that all of them cast their votes after receipt of the Electoral Roll. R.W. 7 is himself one of the voters of Chak Yusuf. The evidence of these two witnesses is supported by the diary [Ext. 5(b)]. Hence we hold that though the Electoral Roll of Chak Yusuf was received at the booth at 3-35 P.M., all the voters of that village who desired to exercise their franchise polled their votes.

In the circumstances mentioned above, this issue is answered in the negative and the allegation about some voters of Chak Yusuf not being able to poll their votes is negatived.

**Issue No. 12.**—R.Ws. 2, 8 and 15 say that instructions were given to workers of respondent No. 1 that they should be peaceful, that no voter should be carried to any polling booth in a car or any other conveyance and that no bogus votes should be passed. As we are not satisfied that any corrupt practice was resorted to by respondent No. 1, the probability is that the evidence of these witnesses is true. We,

therefore, hold that respondent no 1 took reasonable means for preventing the commission of corrupt and illegal practices and we answer this issue in the affirmative.

*Issues Nos. 6 and 7.*—The petitioner has alleged in the election petition that there was improper acceptance of the nomination papers of several candidates, including the petitioner, but she has confined her attack at the time of hearing of this case to the nomination papers of only Sri Ramdeo Mahton, respondent No. 2.

Sri Ramdeo Mahton filed four nomination papers. They are Exts. 6 and 7 and Court Exts. I and II. The nomination papers (Court Exts. I and II) were rejected on the ground that the proposer and seconder on each of them were the same as those in the nomination paper (Ext. 6). The other two nominations were accepted and the petitioner's case is that they were improperly accepted. The ground taken by her is that there is no declaration of appointment of an election agent with either of these two nomination papers (Exts 6 and 7) as required under section 33(3) of the Act. Ext.6 has been filled up in a typed form in English and Ext. 7 has been filled up in a printed form in Hindi. The form of declaration of appointment of an election agent is to be found at page 2 of each of these forms. In Ext.6, there is a blank space left for filling in the name of the election agent with the words "son of" and another blank space for filling in the name of the father of the election agent. The word "myself" has been typed under these blank spaces and words. In the next line, there is another blank space after the word "of" for filling in the residence of the election agent and the words "as my" under this blank space. The form of declaration at page 2 of Ext.7 is also similar, the only difference being that the words used in that form are Hindi words. Anyone choosing to appoint himself as his election agent could cancel the blank spaces in both the forms, leaving the word "myself" and "as my" in Ext.6 and the word "apne" in Ext.7, intact. In Ext.6 the blank spaces as well as the words "myself" and "as my" have all been cancelled and three initials "R.D" have been made. In Ext.7, the same thing has been done and the initials "Ra Ma" have been made. The petitioner's case is that the forms of declaration of appointment of election agent in both the nomination papers were thus in such a condition that they did not show the appointment of either the candidate himself or anyone else as his election agent. On the other hand, the case of respondent no 1 is that Ramdeo Mahton had left the words "myself" and "as my" in Ext. 6 and the word "apne" in Ext. 7 intact so as to show that he had appointed himself as his election agent and he penned through the aforesaid words and made his initials in both the forms of declaration after announcement of the result of the election in collusion with the Congress party candidate.

P.W.16 is a Mukhtar. He subscribed the nomination paper (Ext.6) as seconder and his signature is Ext.6(d). He has not said anything about the condition in which the forms of declaration in Exts. 6 and 7 were at the time when the nomination papers were filed. The petitioner (P.W.18) has said that they were in the same condition at the time of the filling of the nomination papers as they are at present. P.W.3 is a Mukhiar who subscribed the nomination paper (Ext.6) as proposer. He says that Ramdeo Mahton told him that he would appoint himself as his election agent, that he instructed Ramdeo Mahton to fill up the relevant columns of the nomination paper accordingly and that Ramdeo Mahton told him later that he had penned through the portions which had to be deleted. He admits, however, that he does not remember to have seen the column relating to the declaration of appointment of an election agent in the nomination paper of Ramdeo Mahton after he had completed it. Thus his evidence is insufficient to show which party's case is true. P.W.4 subscribed the nomination paper of respondent no.1 as proposer. P.W.14 was the polling agent of respondent no 1 at three booths. P.W.15 is respondent no.1 himself. These three witnesses have supported the case of respondent no.1 on this point. We find it difficult to act upon their evidence as they are interested witnesses. It may be mentioned, however, that respondent No. 1 admits that he got the nomination papers of Ramdeo Mahton inspected after receiving notice relating to this case from the Tribunal, that he then found that the declarations in the nomination papers had been tampered with and that he stated by guess that the forgeries were made after announcement of the result of the election. It is also necessary to mention that none of these three witnesses says that the declarations in the nomination papers (Court Exts I and II) have been tampered with. Neither party made any prayer to call for Court Exts. I and II, but this Tribunal, of its own motion, called for them for the sake of justice. We find that the form used in Court Ext.I is a printed form in English and that used in Court Ext.II is a printed form in Hindi. The form of declaration of appointment of an election agent in Court Ext.I is almost exactly in the same condition as in Ext.6 and three initials "R.D." have been made in this form of declaration also. The form of declaration in Ext.II

is in the same condition as that in Ext. 7 and we find that two initials "Ra.Ma" have been made in it.

Mr. Lachmi Narain Singh (R.W.6) was the Subdivisional Officer of Khagaria and, during the last General Election, he was the Returning officer of five constituencies, including the constituencies, in question. He admits that altogether about 200 or 250 nomination papers were filed before him in connection with all the five constituencies and that 50 or 60 nomination papers were filed in connection with the constituency in question only. He has stated in his examination-in-chief that the word "myself" on Ext.6 and the word "apne" on Ext.7 were not penned through and the initials "R.D." and "Ra.Ma" were not in existence at the time when Exts. 6 and 7 were filed before him and at the time of scrutiny. He has further stated that he did not carefully scrutinise the declarations of appointment of election agent on Court Exts. I and II because they were rejected on a different ground. We considered it rather improbable for the Returning officer to remember details about two nomination papers (Exts.6 and 7) so positively when he had to deal with no less than 200 or 250 nomination papers. This Tribunal, therefore, put some questions to him in order to ascertain the real position. In answer to the questions of this Tribunal, he has stated that he says that the word "myself" on Ext.6 and the word "apne" on Ext.7 were not penned through because he would have necessarily rejected these nomination papers if those words had been penned through, that he has no other reason for recollection, that he has no independent recollection of how the forms of declaration stood at the time of scrutiny, that he says that the initials were not in existence in Exts.6 and 7 because the ink with which they have been made is different from the ink with which Ramdeo Mahton has made his signatures and that he says that all the initials were made after the scrutiny because they are all in the same ink. Thus it is clear that he has no independent recollection. The whole of his evidence in chief is based merely upon his confidence that he would have rejected the nomination papers (Exts.6 and 7) if the forms of declaration on them had been in the same condition at the time of scrutiny as they are at present. This confidence has been enhanced because of his belief that he is incapable of making a mistake. He goes to the length of saying "it is not possible that I may have by mistake failed to notice a defect in a nomination paper". We think that this is a claim which cannot be accepted by any reasonable person. No one is above committing a mistake. We may also say that his conclusion that the initials were made after the scrutiny of nomination papers is based upon the fact that he believes that the words "myself" and "apne" etc. were not penned through and the initials could not have been there at the time of scrutiny. As we do not feel sure that this officer could not accept the nomination papers on account of failing to notice the defects in the forms of declaration by mistake at the time of scrutiny, we find it difficult to act on his evidence which is entirely based upon the footing that he must have noticed those defects if they had been there and must have, therefore, rejected the nomination papers.

For the sake of justice, we summoned Sri Ramdeo Mahton and examined him as a court witness. He is a Mukhtar practising at Khagaria. He says that all the forms of declaration of appointment of election agent are in the same condition as they were at the time when he filed the nomination papers and at the time of scrutiny. He has explained further that he originally left the word "myself" etc. in the English forms and the word "apne" in the Hindi forms intact so as to indicate that he had appointed himself as his election agent, that a Mukhtar named Sri Kunj Behari Saran told him that he might not be able to work properly as his own agent because he would be busy with his professional and other works, that he approved of this opinion, penned through the words "myself" and "apne" etc. and initialled the cuttings in the hope that another Mukhtar named Srinarain Mandal would agree to be his election agent, that subsequently Srinarain Mandal refused to be his election agent on the ground that he was a member of the Congress whereas Sri Ramdeo Mahton was standing as an Independent candidate and that he (Ramdeo Mahton) left the form of declaration as it was because he thought that he would be deemed to be his own election agent when he was not putting the name of anyone else as his election agent in the forms of declaration.

As Sri Ramdeo Mahton was a candidate for election and was defeated, it is likely that he is interested in the election being set aside. Even so, he impressed us as a reliable witness. His evidence in court is consistent with his written-statement though, in his written-statement, he has necessarily given his story very shortly. One circumstance which supports his story is that the forms of declaration in the rejected nomination papers (Court Exts. I and II) are almost exactly in the same condition in which the forms of declaration in Exts.6 and 7 are. If Ramdeo Mahton had decided in collusion with the petitioner after announcement of the result of the election that the forms of declaration should be tampered with, we do

not think that it would have occurred to them to tamper with the forms of declaration on rejected nomination papers also. It is obvious that even the petitioner did not know what condition the forms of declaration in Court Exts. I and II were in. If she had known, she would have herself called for those papers. Besides it is not the case of respondent no 1 that Court Exts I and II were also tampered with. In these circumstances, we hold that the evidence of Ramdeo Mahton in connection with the forms of declaration on Exts. 6 and 7 is true. The position, therefore, is that there was no declaration of appointment of himself or anyone else as election agent with the nomination papers filed by Sri Ramdeo Mahton

Section 33(3) of the Act provides that no candidate shall be deemed to be duly nominated unless a declaration of appointment of election agent and other necessary declarations, if any, are submitted along with his nomination paper. Apart from the fact that the word "shall" has been used in the part of sub-section (3) which we have referred to, the provision has been put in the negative form. One of the canons of interpretation of statutes is that the use of negative words gives the provision imperative effect. This provision must, therefore, be held to be mandatory. As this mandatory provision was not complied with, it is manifest that Sri Ramdeo Mahton cannot be deemed to have been duly nominated. We have taken the same view in our judgment, dated 27th January, 1953 in the case of Parbatta Constituency reported in the Extraordinary Gazette of India, Part II-Section 3, dated the 2nd February 1953. Hence we hold that the nomination papers of Sri Ramdeo Mahton were improperly accepted

The next question is whether the result of the election has been materially affected due to improper acceptance of Sri Ramdeo Mahton's nomination papers. As we have said in our judgment which we have just referred to, two views have been expressed in different cases. One view is that the petitioner must prove by affirmative evidence that all or a large number of votes secured by the candidate whose nomination paper has been improperly accepted would have gone to him or to her. It seems to us that no affirmative evidence can be given. If a witness comes forward to say that most of the votes secured by Ramdeo Mahton would have gone to the petitioner, this would amount to a mere opinion or guess and would not be admissible. If a voter comes forward to say that he would have voted for the petitioner if Sri Ramdeo Mahton had not been in the field, the secrecy of voting would be violated and it would not be permissible in view of section 94 of the Act. Hence we are unable to agree with this view. The other view is that improper acceptance of nomination paper as well as rejection of it is so grave an irregularity that a presumption arises that the election has been materially affected. We do not think that improper acceptance of nomination paper can be placed on the same footing as improper rejection because, in the case of improper rejection, the constituency is deprived of the right to make a choice between the candidates whose nomination papers have been accepted and the candidate whose nomination paper has been improperly rejected. If the number of votes secured by a candidate whose nomination paper has been improperly accepted is lower than the difference between the numbers of votes secured by the successful candidate and the candidate who has secured the next highest number of votes, it cannot possibly be said that the result of the election has been materially affected. On the other hand, it is impossible to foresee the result if the number of votes secured by the candidate whose nomination paper had been improperly accepted is higher than the difference. We are not required to consider whether the result of the election would have been altered but only whether the result has been materially affected. When we are not in a position to say what would have been the result of the election if the votes secured by a candidate who has been wrongly deemed to be a duly nominated candidate had been made available to the other candidates including the petitioner, there is no escape from the conclusion that the result has been materially affected. We do not consider it necessary to discuss this point any further as we have already discussed it fully in the judgment referred to above. The difference in the number of votes between the petitioner and respondent No 1 is one of 1,560 votes only. Sri Ramdeo Mahton secured 2,124 votes i.e. 564 votes more than the difference. We, therefore, hold that the result of the election has been materially affected.

We answer issue No. 6 in the affirmative and issue No. 7 in the negative.

Issue No. 13.—In view of our findings on issues Nos. 6 and 7, the petitioner is entitled to a declaration that the election is wholly void.

It is, therefore,

## ORDERED

that the election be declared to be wholly void. Parties will bear their own costs as we have not found respondent No. 1 to be at fault.

(Sd.) K. SAHAI, *Chairman.*

(Sd.) U. K. P. SINHA, *Member.*

(Sd.) RAJESWARI PRASAD, *Member.*

[No. 19/114/52-Elec. III.]

BHAGALPUR;

The 18th February, 1953.

S.R.O. 393.—WHEREAS the election of Shri Manohar Rao Jatar of Girijakund Ward, Seoni, Chhindwara District, to the Madhya Pradesh Legislative Assembly from the Kanhiwara constituency of that Assembly, has been called in question by an election petition (Election petition No. 289 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Narayandas of Seoni, Chhindwara District, Madhya Pradesh;

AND WHEREAS the Election Tribunal, appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said election petition;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, JABALPUR

PRESENT : (1) Shri N. H. Mujumdar, B.Sc., LL.B.—*Chairman.*

(2) Shri G. A. Phadke, B.A., LL.B.—*Member.*

(3) Shri M. M. Mullna, M.A., B.L.—*Member.*

ELECTION PETITION CASE NO. 3 OF 1952.

Shri Narayandas s/o Shri Chimanlal Gupta, aged 36 years, Agriculturist, resident of Seoni town, taluk Seoni, district Chhindwara—*Petitioner.*

*Versus*

- (1) Shri Manohar Rao Jatar
- (2) Shri Jhumaklal Bhau
- (3) Shri Deepsingh
- (4) Shri Saheblal
- (5) Shri Rammnath
- (6) Shri Narayanprasad—*Respondents.*

ORDER

Passed this 20th day of February 1953.

The petitioner Narayandas—one of the defeated candidates in the Election to the Kanhiwara Constituency of the Madhya Pradesh Legislative Assembly on the 22nd day of December 1951—filed this petition, calling in question the said Election on several grounds.

2. According to the petitioner, nomination-papers of Respondents No. 2 Jhumaklal, No. 3 Deepsingh and No. 4 Saheblal, were improperly accepted, as each of them held an office of profit under the State, in as much as he was a Patel and the nomination of Respondent No. 5—Rammnath—was improperly accepted because he was less than 25 years of age on the date on which he filled his nomination paper. The petitioner has also charged the Respondent No. 1, Shri Manohar Rao, the returned candidate—with having committed either by himself or through his agents, several major corrupt practices, which have materially affected the result of the Election.

3. Respondent No. 1.—Manohar Rao, the only contesting respondent, has admitted that Respondents No. 2, 3 and 4 were Patels; but according to him, the disqualification attached to their office of Patel was removed. It was further stated in respect of Respondents Deepsingh and Saheblal that they had tendered their resignations a few days before they had filed their nomination papers. In respect of Respondent No. 5 Ramnath, it was stated that he was more than 25 years of age. It was further stated that he or his Agents had not committed any corrupt practice; and whatever he or his Agent did, did not amount to corrupt practice. Respondent No. 5 Ramnath has stated that he was more than 25 years of age on the date of the nomination; but he has admitted the rest of the allegations in the petition. Saheblal has also admitted most of the allegations in the petition, except those that relate to his disqualification as a Patel. According to him, he had resigned, and was no longer a Patel on the date of the nomination. Similarly, Respondent No. 6 Narayanprasad admitted almost all the allegations in the petition; but he and Saheblal, however, claimed no interest in the trial of the petition. Respondent No. 3 Deepsingh has partly admitted the allegations in the petition.

4. The questions that arose for determination are covered by the following issues that were framed for the trial :—

<i>Issues</i>	<i>Findings</i>
1. (a) Were the respondent No. 2, Shri Jhumaklal, respondent No. 3 Shri Deepsingh and respondent No. 4, Shri Saheblal appointed Patels of the villages Mohabara, Surekha Kalan and Bomba Tola respectively ?	Yes.
(b) Had the respondents 3 and 4 tendered their resignation of the office of Patel on 12-11-51 and 10-11-1951 respectively; and did they cease to perform the duties of Patel from the date of their resignation ?	Yes No.
(c) Did the respondents Nos. 2, 3 and 4 receive or were they entitled to receive any remuneration or profit for their work as Patel ?	Entitled to receive.
(d) Did the respondent Nos. 2, 3 and 4 hold an "office of profit" under the State Government of Madhya Pradesh at the time of submission of the nomination papers by them ?	Yes.
(e) Were the respondents 3 and 4 bound under law to give 3 months notice to the State, or their intention to resign ?	Yes.
(f) Was the resignation of the respondent No. 3 never accepted and had he withdrawn it on 22-2-1952 ?	Yes.
(g) Was the resignation of the respondent No. 4 accepted on 13-3-1952 and did the acceptance relate back to the date of the resignation ?	Yes.
i) Was the respondent No. 5, Shri Ramnath, less than 25 years of age at the time of his filling of the nomination paper ?	No.
and	
Was this a disqualification disentitling him to contest the election to a seat in the Legislative Assembly of Madhya Pradesh ?	Yes.
(i) Was the alleged disqualification of the respondent Nos. 2, 3 and 4 removed by law [Madhya Pradesh offices of Profit (Removal of Disqualifications) Act, 1940] ?	Yes. No.
(j) Was the acceptance of the nominations of the respondents 2, 3, 4 and 5 (Shri Jhumaklal, Shri Deepsingh, Shri Saheblal and Shri Ramnath) improper or illegal and has it materially affected the election of Kanhiwara Legislative Assembly Constituency seat or the prospects of election of the Petitioner to the said seat ?	Does not arise. No.
2. (a) Did the respondent No. 1, his agents, or other persons with his or his agents connivance publish broadcast within the Kanhiwara Legislative Assembly Constituency that the petitioner was not given a Congress Ticket and had been expelled from the Congress ?	

Issues	Findings
(b) Were these representations false and did the respondent No. 1 or his agents or supporters believe the statements to be false or to be not true ?	Does not arise.
3. (a) Were the (1) District Congress Committee, Seoni, its President and the Secretary, and (2) Shri Habibur Rehman, (3) Shri Laipat, (4) Shri Abdul Rab Khan, (5) Shri Kapurchand Jain, (6) Shri Sardar Singh Pawar, the agents or canvassers of the respondent No. 1 or did they work as such from about 5-12-1951 till 22-12-51 through the Kanhiwara Legislative Assembly Constituency ? and Did they orally and in writing publish ; or did any other persons with the connivance of the respondent No. 1 Shri Manohar Rao or his agent, publish the statements :	Only the District Congress Committee with the consent of Respdt. No. 1 publish the statements against which "Yes" has been marked.
(i) that the petitioner never visited his constituency of Amarwara Lakhnadon Tahsils after his election as a member of the Legislative Assembly in the previous election ;	Yes.
(ii) that the Petitioner originally worked for the abolition of the Malguzari but later opposed it ;	Yes.
(iii) that he was against prohibition by law of cow slaughter ; and:	Yes.
(iv) that his brother obstructed construction of a mosque at his village Chhul within the said Constituency ?	Yes.
(b) (i) Were these statements false ? and (ii) Did the respondent No. 1 or his agent know or believe that they were false or did he believe that they were not true ?	No.
(c) Were the statements reasonably calculated to prejudice the prospects of the Petitioner in the Election ?	Does not arise.
(d) Was the Poster, Ex-P-15, widely published throughout the Constituency by the Respondent No. 1, or his agents or other persons with his or his agents' connivance ?	Yes.
Was the photograph of Mahatma Gandhi cut out from the poster before exhibiting it ?	Yes.
(e) Is the statement that Mahatma Gandhi sponsored the candidature of the respondent No. 1, Shri Manohar Rao, and that he disapproved the candidature of the Petitioner implied in the Poster ?	No.
(f) Was it false and did the respondent No. 1 or his Agents know or believe it to be false or not to be true ?	Does not arise.
(g) Is a reference to the respondent No. 1 implied in the reference to the Congress in the Poster ?	Yes.
4. (a) Were (1) Shri Murarlal Garhewal, as the Sarpanch of the Nyaya Panchayat, Chhapara Pandiya (2) Shri Sakhamani as Patel and Mukaddam of Bisapur, (3) Shri Kapurchand Jain as a Sarpanch of the Nyaya Panchayat Keolari (4) Shri Toomchand as a Panch of the Nyaya Panchayat Bandol, (5) Shri Birju Gond as a Patel and Mukaddam of Udepani, servants of the State of Madhya Pradesh ?	No. (1) Yes. No. (2) not proved. No. (3) yes. No. (4) Yes. No. (5) Yes.
(b) Did the respondent No. 1, Shri Manohar Rao, obtain or procure or attempt to obtain or procure assistance of the persons mentioned in issue No. 4(a) for the furtherance of the prospects of his Election and did these persons work and canvass votes for the respondent No. 1 ?	No. (1) Yes. Nos. (2) to (5) No.

## Issues

## Findings

(c) Did Shri Murarilal Garhewal issue the pamphlet, Ex. P-1, in the Kanhiwara Assembly Constituency ? Yes.	
and	
Was he paid Rs. 121 by the respondent No. 1 for the assistance given by him for the furtherance of his prospects of the respondent No. 1 in the Election ?	Rs. 121 were paid for expenses.
(d) Was Shri Birju Gond paid Rs. 85 for the assistance given by him for the furtherance of the prospects of the respondent No. 1 in the Election ?	No.
(e) Was Shri Toomchand, a panch of the Nyaya Panchayat Bandol, appointed the Polling Agent at Kalar Banki on 23-12-52, and	Yes.
Did this amount to assistance for furthering the prospects of the candidate at the Election ?	No.
(f) Did Shri Abdul Rehman Khan, Hulla Prasad, Bapurao Gadekar, Panchas of the Nyaya Panchayat Kanhiwara, Hardwariyal, Panch of the Nyaya Panchayat Khaira, Sardar Singh and Tularam Master, Panches of the Nyaya Panchayat Ugli, work for furthering the prospects of the respondent No. 1 in the Election ?	No.
(g) Were they the servants of the State of Madhya Pradesh and were they therefore prohibited from working for furthering the prospects of any candidate in the Election ?	They were not serving under the State.
5. (a) Did Lajpat Agarwal work as an Agent or canvasser for the respondent No. 1 ?	No.
(b) Did he at the instance or by the connivance of the respondent No. 1 or his agent canvass votes for the respondent No. 1 within the prohibited limit of 100 yards of Kanhiwara Polling Station ?	No.
(c) Did Shri K. P. Tiwari, Additional Deputy Commissioner, Seoni, enter into the Polling compartment ?	He had gone to the Polling Station and remained there at the request of the Presiding Officer.
Had he no right to do so as an Officer supervising the Polling ?	Does not arise.
(d) Did he (Shri K. P. Tiwari) sit with Shri Lajpat Agarwal in the verandah of the Polling Booth and issue slips of paper bearing Serial Nos. to the Electors and thus assist Shri Lajpat Agarwal in furthering the prospects of respondent No. 1 in the Election ?	Yes but he was not assisting Lajpat Agarwal nor did he act for furthering the prospects of Respondent No. 1 in the election.
(e) Was this done by Shri Tiwari at the instance or with the connivance of the respondent No. 1 or his agent ?	No.
6 (a) Did the Sub-Inspector Karajgaonkar of the Police Station Kanhiwara persuaded the Electors in the Kanhiwara Constituency to vote for the Congress candidate, the respondent No. 1, at the instance or with the connivance of respondent No. 1 or his agent ?	No.
(b) Did he on 5-12-1951, at Bhoma, intimidate Shri H. C. Mallu, the Agent of the Petitioner, not to work for him, at the instance or with the connivance of respondent No. 1 or his Agent ?	No.

Issues	Findings
7. Were Shri Tejisinhg, Shri Narayansingh, Shri Lajpat and Shri Ramlakhansingh, Agents of the respondent No. 1 ? and Did they escort the Electors or canvass votes for the respondent No. 1 ? and Did Shri Ramlakhansingh hold a meeting at Balgai on 22-12-1951 to canvass the votes of the Electors for the respondent No. 1 within the prohibitory limits of 100 yards of the polling Stations at Keolari, Baniol, Kanhiwara and Baglai ?	Narayansingh - Yes. Others - No.
8. Did Shri K. P. Tiwari, Additional Deputy Commissioner, Sconi, enter the polling compartments at Bhoma, Kanhiwara and other polling stations on 22-12-1951 during the hours fixed for polling while the polling was in progress ?	No.
Did he hustle the Polling Officers to admit 300 voters because they were expected to vote for the Respondent No. 1 Shri Manohar Rao. ?	No.
Did he do so at the instance or with the connivance of the respondent No. 1 or his agent ?	Does not arise. He did not affect at the instance or with the connivance of Respondent No. 1 or his agent.
9 (a) Were the ballot boxes in Kanhiwara and Barghat Legislative Assembly Constituencies not kept in the Sconi Sub-Treasury and were arrangements for the safe custody of such boxes and other papers relating to the Election not adequate ?	Arrangements were adequate.
(b) Was there an undue delay in counting of votes of the Kanhiwara Constituency ?	No.
How does the question affect the validity of the Election of the Respondent No. 1 ?	It does not.
(a) Are the Gond Maha Sabha and the Garhewal Samaj communal bodies ?	Partly communal and partly political.
(b) Was the pamphlet Ex. J. widely distributed throughout the Kanhiwara Constituency from 22-11-51 to 22-12-1951 ?	Yes.
Did Shri Birju Gond distribute the pamphlet, and was he paid Rs. 85 for this work ?	Yes. (but he was another Birju Gond).
Did Shri Mangru Gond, as a President or the Secretary of the Gond Mahasabha sign the pamphlet, Ex. J. ? and	Yes.
Did he in his speech delivered at a meeting in Kanhiwara on 4-12-1951, and at a meeting at Bhoma on 5-12-1951, appeal to the Gonds to vote for the Congress candidate, the respondent No. 1 ?	Yes.
(c) Was Shri Murarilal Bramha, the President of the Garhewal Samaj and did he sign the Pamphlet, Ex. I ?	Yes.
Were the copies of the pamphlet, Ex. I, distributed throughout the Kanhiwara Constituency and Shri Murarilal Bramha or by other persons with the connivance of the respondent No. 1, Manohar Rao ? and	Yes.
Was Shri Murarilal paid by the respondent No. 1 Rs. 121 on this account ?	Yes, for expenses.
(d) Is the poster Ex. H, containing Mahatma Gandhi's photograph and depicting Shri Jawaharlal Nehru as hoisting the Congress Flag on the Red Fort at Delhi, a Poster containing National Symbols ?	No.

## Issues

## Findings

(e) Were the appeals made orally and by distribution of No pamphlets, Exhs. J and I appeals to the members of the communities ?

and

Was an appeal by the exhibition of the Poster, Art. H, No an appeal to the National Symbols ?

(f) Was the election of respondent No. 1 procured or induced in or was the result of the election materially affected by a systematic communal appeal or appeal to National Symbols as stated above in issues to (a) to to (e) ?

11. (a) Did the respondent No. 1 or any other person with his connivance spend for the printing and publishing of the posters, G, H, I and J, and the posters mentioned in paragraph 8 (d) (2) (vi) of the Petition ?

and

Did he fail to include this expenditure in the Return of Election Expenses ? Yes

(b) Is the Return of the Election Expenses false ? . . No

12. Did the respondent No. 3 Shri Deep Singh, obtain or procure or attempt to obtain or procure for the furtherance of his prospects in the Election, assistance of Shri Jhumaklal Bhai by inducing him to announce his withdrawal after the prescribed date in pursuance of the certain terms and understanding arrived at between them and did the respondent No. 2 issue pamphlets, Ex. K and L, and a third pamphlet dated 3-12-1951, to support the candidature of the respondent No. 3, Shri Deep Singh ?

Was this a corrupt practice ? . . . . Does not arise.

How does this affect the Petitioner's election ? . . Does not arise.

13. (a) Did the conduct of the Respondent No. 1 or his Agents or other persons referred to in Issues Nos. 2 to 12, if such other persons are shown to have acted with the connivance of the Respondent No. 1 amount to "corrupt or illegal practice" ?

The findings recorded above covers the points.

(b) Did the Respondent No. 1 and his Agents take all reasonable steps to prevent the commission of corrupt practices ?

(c) Have the alleged corrupt practices if proved materially affected the result of Elections ? No

14. (a) Should the respondent's election be held void ? . No

(b) What Order should be made as regards costs ? . . See paragraph 45.

15. The questions covered by the issues, when grouped and narrowed down, are as under :—

(i) Whether nomination papers of Respondent Nos. 2, 3, 4 and 5 were improperly accepted ?

If so,

Was the result of the election materially affected thereby ?

(ii) Whether any major or minor or illegal practice was committed by the Respondent No. 1 or his Agents or others at his connivance?

If so,

What is its effect on the Election?

6. According to the Petitioner, Respondent Nos. 2, 3 and 4—Jhumaklal, Deepsingh and Saheblal—were appointed Patels under the M.P. Abolition of Proprietary Rights Act (Act No. I of 1951), and they continued to hold that office on the date of the filing of their nomination papers. The office of Patel is an office of profit and consequently, these persons were disqualified for being chosen as members of the Legislative Assembly of a State.

7. According to the Respondent No. 1—Jhumaklal—Deepsingh and Saheblal, were appointed Patels under the M.P. Abolition of Proprietary Rights Act; but Deepsingh and Saheblal had tendered their resignation on 12th November, 1951 and 10th November, 1951 respectively; and they ceased to be Patels from the date of their resignations. It was further stated that the office of a Patel is not an office of profit under the State; and, consequently no disqualification was attached to that office. Lastly it was urged that the disqualification had been removed by the State Legislature.

8. Respondents 2, 3 and 4 were admittedly Patels appointed under Act No. I of 1951 (M.P. Abolition of Proprietary Rights Act). The questions, whether a Patel under Act No. I of 1951, is an office of profit, and whether the disqualification attached to an office of profit under Article 191 of the Constitution was removed in respect of such office, have been considered by us in detail in another Election Petition Case decided by us only yesterday (vide Election Petition Case No. 4 of 1952, Jagannath—Vs—Achwal Pandurang & 22 others). We do not, therefore, think it necessary to reproduce those reasons here. For reasons already stated in the other Election Petition (No. 4 of 1952), we hold that Patel is an office of profit under the State, and we, further, hold that disqualification attached to that office was removed by Act No. VII, of 1950 [M.P. Offices of Profit (Removal of Disqualifications) Act]. We hold, therefore, that the Respondents 2, 3 and 4 were not disqualified from contesting the Election in question.

9. In the view that we have taken on the legal aspect of these questions, it is not necessary to decide whether the resignations tendered by Respondents 2 and 3 were valid; and whether they were effective from the date on which they were tendered. Deepsingh had tendered his resignation on 12th November, 1951; but subsequently, he withdrew it on 22nd February 1952. Saheblal had tendered his resignation on 10th November 1951; and it was accepted on 13th March, 1952. Saheblal's resignation having been accepted may relate back to the date on which it was tendered; and Deepsingh continued to be a Patel because his resignation was subsequently withdrawn.

10. In respect of Respondent No. 5—Ramnath, it was alleged in the petition that as Ramnath himself had shown his age to be 23 years, in his nomination paper, the Returning Officer should have rejected the nomination paper. It should be noted that the petitioner did not make an allegation that Ramnath was less than 25 years of age on the date of his nomination. Ramnath entered the witness-box and said that he was born on 15th July 1925, which means, he was more than 25 years of age on 15th November, 1951, when he filed his nomination paper. His evidence regarding age has not much value and he can have no personal knowledge of the date of his birth. He further said that he was educated in the Khurai School. The respondent No. 1 has filed Extracts of his School Register, in which 15th July, 1925 is shown to be the date of birth of Ramnath (Ex. 3).

11. The Respondent No. 1 has filed another extracts from the Kotwari Register (Ex. 1R-2), in which it is shown that a son was born to Kunjbiharlal—the father of Ramnath on 24th July 1925. There is a difference of 9 days between these two dates. The question of the minority of Ramnath on the date of his nomination was not specifically raised in the petition; and, therefore, in our opinion, the evidence of Ramnath coupled with the entries in the School Register, where he was educated, is sufficient to hold that he was more than 25 years of age on the date of his nomination. Ramnath could not offer a satisfactory explanation for his showing his age to be 23 years in the nomination paper; but it was suggested by the learned Counsel for Respondent No. 1 that Electoral Rolls in the Constituency were prepared in 1949, and, at that time, Ramnath was 23 years old, and, therefore, Ramnath had, perhaps, shown the same age in the nomination paper as was shown in the Electoral Rolls. This may be true. According to Ramnath, the age—23 years—as shown in the nomination paper was a mistake; and in our opinion, his evidence read with the entries in the School Register, is sufficient to rebut the presumption that arises from the entries.

in the nomination paper itself. We hold, therefore, that Ramnath was more than 25 years of age on the date of his nomination and, consequently, acceptance of his nomination paper was not improper.

12. According to the Petitioner, a false statement in relation to the personal character or conduct of the Petitioner was made by the Respondent No. 1, and his Agents, at several places. P.W. 16 Dallu, an old servant of the Petitioner had produced a chit Ex. P-58, in which the respondent No. 1 has written that the petitioner was not given a congress-ticket and that he was expelled from the Congress; and it is not true that he, i.e. the petitioner, was a Congress candidate. The Respondent No. 1 has admitted that he had given this writing and he has also given his reasons for it. Admittedly, about 20 days before the date of polling (the date of polling was 22nd December, 1951), there was a gathering of about 100 to 150 people at the house of one Patel in a village in the Constituency. Bhagwat was read from day to day for a period of a week; and on the completion of its reading, there was a feast, for which people had collected. After the guests had taken their meals and were busy in taking *pan-supari* etc., the subject of Election and the claims of contesting rivals was introduced in the conversation, in which, according to the Respondent No. 1's own evidence, Dallu and Ramchhor—the *munim* of the petitioner—and one Shripat had indulged in the false propaganda to the effect that Narayandas was a Congress-man and was given a Congress-ticket etc. etc. The Respondent No. 1 felt the necessity of contradicting the said propaganda; and he, therefore, declared that those statements were incorrect. Each party charged the other of making false statements, and the matter reached the stage when the Petitioner's servants and Ranchhordas challenged the Respondent No. 1 to give a writing in support of his statement; and accordingly the Respondent No. 1 made a note Ex. P-58. Three statements are contained in the note, one of which, viz that Narayandas was expelled from the Congress, is obviously incorrect.

13. Narayandas was a member of the old Legislative Assembly, and he has admitted that, in the last Session of the sitting of the Assembly, he had left the Congress party, and joined the opposition, and had made speeches opposing the party in power—viz. the Congress. Manohar Rao deposed that on account of the conduct of the petitioner, he believed the report he had heard; viz. that the petitioner had been expelled from the Congress. He also deposed that there is also a provision in the Congress Constitution to expel such a member, i.e. who leaves the Congress party and joins hands with the opposition. Under these circumstances it would appear that the Respondent No. 1, Manohar Rao, was justified in believing that Narayandas had been expelled from the Congress. Manohar Rao admits that he had not come across any report or order issued by the District or Provincial Congress Committee removing Narayandas from the membership of the Congress; but he seems to have believed the reports about expulsion he had heard. There was no cross-examination to show that his statement that he had heard about expulsion of the petitioner was false.

14. A week or 10 days after, the pamphlet (Ex. P-13) was issued under the signature of the President, District Congress Committee, Seoni, in which this matter has been cleared up, by mentioning that Narayandas was once elected on the Congress ticket, had tendered his resignation, asked for its withdrawal, and had again asked for a Congress-ticket, which was offered to him, but as he was insisting upon forming a new party within the Congress party itself, the petitioner had to leave the Congress. These facts are correct, as is admitted by the petitioner in his own evidence.

15. P.W. 1, the petitioner, and P.W. 5 Nasrullah Khan, have given evidence that when Narayandas and Nasrullah Khan were proceeding in one direction in their car, they found one Hullaprasad, sitting in a bullock-cart, coming from the opposite direction. The two vehicles crossed each other in village Bhoma, where, according to the petitioner and Nasrullah Khan, Hullaprasad had said to about 8 or 9 persons that the petitioner had been expelled from the Congress. Hullaprasad was not called as a witness and it is not clear whether this was before or after the publication of the pamphlet Ex. P-13. Ex. P-13 was published under the signature of Narayanprasad, President of the District Congress Committee, and we are not prepared to believe that any propaganda contrary to the contents of Ex. P-13 could have been made by the Congress workers, who were working for the Respondent No. 1. We are not very much impressed with the evidence of Nasrullah Khan; and not one out of those 8 or 9 persons, was called to state that Hullaprasad had made such a representation to them.

16. The other witnesses on the point are P.W. 6 Tarachand, P.W. 14 Saheblal and P.W. 24 Deepchand. Their evidence carries little weight because according to them the propaganda on behalf of Respondent No. 1 on the point was made entirely on the basis of recitals in Ex. P-13. Ex. P-13 clearly mentions that Narayandas was offered a Congress-ticket; and he had once resigned and withdrawn his resignation. It is, therefore, difficult to believe these witnesses when they say that workers of Respondent No. 1 were telling people that Narayandas was turned out of the Congress. In short, the entire evidence led for the petitioner only shows that Ex. P-58 was written by the Respondent. The Respondent has offered a satisfactory explanation for the same. He had reasons to believe that Narayandas must have been expelled from the Congress; and soon after the facts were known to the Respondent or to the District Congress authorities, Ex. P-13 was published in which the true facts were disclosed. There is no satisfactory evidence to hold that besides Ex. P-58, false propaganda to the effect that Narayandas was expelled from the Congress was made by the Respondent or by his agents or others with his connivance.

17. Moreover, publication of a false statement cannot amount to a major corrupt practice as defined in Clause (5) of Section 123 of the Representation of the Peoples Act, unless it is shown, (1) that it is a statement of act as distinguished from an expression of opinion; (2) that it was believed to be false or not believed to be true; and (3) that it related to the personal conduct or character of the candidate, or it related to the candidature of the candidate. The statement contained in Ex. P-58 to the effect that Narayandas was expelled from the Congress is in our opinion an expression of opinion and not a statement of fact. The Respondent No. 1 did not believe it to be untrue; and it does not relate to the personal conduct or character of the petitioner. The writing in Ex. P-58 does not, therefore, amount to a major corrupt practice under Section 123(5) of the Act.

18. The second false statement attributed to have been made by the Respondent No. 1 was that Narayandas had obstructed the construction of a mosque, in village Chhui. Sub-clause G of para. 4 of the Pamphlet—Ex. P-13—shows that the propaganda was to the effect that the brother of Narayandas had obstructed the construction of a mosque. In view of this clear statement made by the District Congress authorities, at Seoni, we are not prepared to believe that there was any propaganda that Narayandas had obstructed the construction of a mosque.

19. The third statement alleged to be false is that Narayandas had opposed the prohibition of cow-slaughter by law. In Sub-Clause kh of para. 4 of the pamphlet—Ex. P-13—it is stated that when the Government made an Act, prohibiting cow-slaughter, Narayandas criticised the Government in a speech in the Assembly; and said that Musalmans were being oppressed and the Government were in favour of the Hindus. The allegations against him—as contained in Ex. P-13—are amply borne out by petitioner's own speeches in the Assembly (a copy of which was made available to us. See the report on page 30 of मध्य प्रदेश विधान-सभा की कार्यसाहित्य अधीकृत विवरण ग्रंथ, खंड १२, संख्या ८

dated 30th August, 1951).

20. The fourth statement against the petitioner, alleged to be false is that he had originally worked for the abolition of malguzari, but later on opposed it. This allegation is contained in sub-clause K of Paragraph No. 4 of Ex. P-13. Narayandas has admitted in his evidence that an institution called Hind Gram Sabha, of Nagpur was formed by the influential malguzars of the province with the object of opposing the abolition of malguzari. Though he was not its member, he had attended about five meetings of this Sabha on special invitation. In Seoni, there was a Malguzars' Association; and Narayandas had directed the Malguzars who had consulted him, to go to Shri Kamnath Bhargava, Pleader of Seoni. He admits that he was also present at the residence of Shri Sitacharan Dube, Advocate, Nagpur, where some malguzars were discussing the question of their filing a mandamus petition in the High Court, against the abolition of Malguzari Bill. According to Narayandas, he was with Sitacharan Dube to consult him about the effect of the Malguzari Abolition Bill on one of his villages, which in his opinion was not a malguzari village; and he had also casually taken part in the discussion between the Malguzars and Shri Dube. Ex. 1-R-4 is a draft of a letter, which was prepared by Narayandas. It was meant to be sent to one Mr Bhargava of Jabalpur. The letter relates to the activities of the Malguzars' Association of Seoni and the steps they have so far taken in the matter of filing the mandamus petition in the High Court. Narayandas admitted that he had prepared this draft; but, according

to him, it was for one Seth Birdichand Malguzar of Seoni. Preparation of this draft—Ex. 1-R-4, is in our opinion sufficient to conclude that Narayandas took great interest in the activities of the Malguzars, who wanted to prevent the abolition of their malguzari rights. The propaganda made on behalf of the Respondent No. 1 to that effect cannot, therefore, be said to be false; on the other hand, there was sufficient justification for it.

21. Lastly it was alleged that Narayandas had not toured in the constituency, from which he was elected in the last Election. In the Election of 1946, Narayandas was elected to the State Legislature, on Congress-ticket from Amarwara-Lakhnadon Constituency. The evidence on this point is very vague. The petitioner has said that he had received complaints from people that such propaganda was being made against him by the Congress-workers. Petitioner's own workers such as P.W. 6 Tarachand, P.W. 17 Abdul Rahman Faruqui, and P.W. 5 Nasrullah Khan have also said that such propaganda was being carried on on behalf of the Respondent No. 1. But these witnesses have not named a single individual who had made such a statement in public or private meetings. The Respondent No. 1 has denied that such a propaganda was made by his workers. We are not, therefore, prepared to accept that such propaganda, *viz.*, that Narayandas had not visited his constituency, was ever made by the Respondent No. 1 or any of his workers. Moreover, the statement does not relate to the personal character or conduct of the petitioner.

22. There is sufficient evidence on record to hold that the poster—Ex. P-15—containing the picture of Mahatma Gandhi was published broadcast throughout the constituency. The respondent No. 1 has, however, said that he had received 25 copies of this poster and from each of which he had removed the picture of Mahatma Gandhi, and substituted in its place a pamphlet, and he had then pasted the posters in the Constituency. None of such posters was, however, produced by him. The Respondent No. 1 may have exhibited the posters like Ex. P-15, removing the picture of Mahatma Gandhi from them, but the fact remains that posters with the picture of Mahatma Gandhi were published broadcast throughout the Constituency by the Provincial or District Congress Committees.

23. According to the petitioner, the poster was intended to create, and as a matter of fact, it did create an impression on the voters that Mahatma Gandhi was sponsoring the candidature of Respondent No. 1 and disapproving that of the petitioner. It is contended that the poster had thus an effect of publication of a statement of fact which is false, and which the respondent either believed to be false or did not believe to be true. According to the Respondent No. 1, the poster was not meant to create nor did it create any such impression. The poster—Ex. P-15—contains the picture of Mahatma Gandhi on the right top corner, and on the left side top is the Red Fort at Delhi, on which Pandit Nehru is standing with the Congress flag in his hand. There is a ladder, by which it is intended to be represented that Pandit Jawaharlal and his followers could reach the top of the Red Fort. It is mentioned in the pamphlet that it was through this organisation *i.e.*, Congress, that the nation could reach that degree of progress and the same ladder will lead to further progress; and, therefore, the voters were asked to vote for the Congress.

23(a). Mahatma Gandhi died in January 1948 and meetings in that connection were held almost in every village. Everyone, therefore, knew that Gandhiji was not alive in 1951: and, therefore, the poster, in our opinion, was not likely to create an impression that Mahatma Gandhi was asking for votes for the Congress candidates. The poster indicates what the Congress had done, and what particular persons were instrumental in attaining that degree of success for the Congress. The poster cannot be interpreted to mean that Gandhiji was sponsoring the candidature of Respondent No. 1 and disapproving that of the petitioner. We hold, therefore, that the petitioner has failed to prove that any false statement covered by Section 123(5) of the Representation of the Peoples Act was made by the Respondent No. 1 or his Agents.

24. According to the petitioner, respondent No. 1 had obtained for furtherance of the prospects of his election, assistance from persons serving under the Government of Madhya Pradesh, such as—members of Nyaya Panchayat and Patels and a Police Sub-Inspector. According to the petitioner, Murarlal, Sarpanch of Nyaya Panchayat Pandiya Chhapara, Sakhararam, Patel of Bisapur, Kapurchand, Sarpanch of Nyaya Panchayat, Keolari, Toomchand, member of the Nyaya Panchayat, Bandol, and one Birju Gond. Patel of Udepani, had worked for respondent No. 1. The respondent No. 1 has admitted that Murarlal had worked for him but Sakhararam and Kapurchand had not worked for him. In respect of Toomchand,

It was stated that he was the polling Agent of Respondent No. 1 at Kalar Banki on the date of the polling and, did no other work for the Respondent. It is admitted that one Birju was the Mukaddam and Patel, and that he has been an old Congress worker; but, according to the Respondent another Birju Gond, living in Bijaypani, a suburb of Udepani, had worked for the respondent No. 1.

25. P.W. 20 Lakheshwar Prasad and P.W. 19 Khare, are the witnesses on the point. According to Lakheshwar Prasad, he had noticed Sakharam canvassing for votes for respondent No. 1, in a hotel at Bandol on the date of polling. Khare had noticed the same thing for which he had lodged a complaint (Ex. P-59) to the Presiding Officer (addressed as 'the Police Officer'). The evidence shows that one Sakharam had canvassed for votes for Respondent No. 1, but there is no satisfactory evidence to hold that the said Sakharam was a Patel. We were not impressed with the evidence of Lakheshwar as he did not appear to be a reliable witness; and Khare did not know the man. Khare is a student of Mahakoshal Mahavidyalaya, Jabalpur. He went to Bandol for the first time on the date of polling. He deposed that he had seen the respondent No. 1, but he could not identify him, though it was respondent No. 1 himself, who was cross-examining him all the time. He could not identify Sakharam Patel. It is doubtful. If he had really seen the respondent No. 1 or Sakharam Patel. His evidence cannot at all be relied upon. Sakharam though present was not examined by the petitioner. We hold, therefore, that it is not proved that Sakharam Patel of Bisapur had worked for respondent No. 1.

26. Kapurchand is a shop-keeper at Keolari. The only evidence against Kapurchand is that a meeting was arranged in front of his shop in which Seth Govind Das and Hon'ble Shri Mehta had spoken; and at the end of the meeting, Kapurchand had said 'Jai Hind. Vote for the Congress.' Kapurchand has grown-up sons and it is not disputed that a meeting was arranged in front of his shop by the Congress workers. The Respondent No. 1 has said that he or Kapurchand had not arranged that meeting. It was, perhaps, arranged as Seth Govind Das and Hon'ble Shri Mehta had to come and address it. Saying of 'Jai Hind' at the end of the meeting will not, in our opinion, be tantamount to doing propaganda for the respondent No. 1. We are not, therefore, prepared to hold that Kapurchand had worked for the Respondent No. 1.

27. Toomchand was admittedly the polling Agent of the Respondent No. 1 on the date of polling at village Kalar Banki. P.W. 18 Chhoturam of Paili, a worker of the petitioner, has said that he had seen Toomchand distributing pamphlets like Ex. P-13 and P-25. No other witness has deposed that he had seen Toomchand doing any work for Respondent No. 1. We are not prepared to accept the interested testimony of P.W. 18, to hold that Toomchand had worked for Respondent No. 1. He had, no doubt, worked as Respondent No. 1's polling agent on the date of the polling, at Kalar Banki. But in our opinion a polling Agent is a person more to assist the work of polling than to work for the candidate in the polling station.

28. One Birju Gond did work for the Respondent No. 1; and he was paid Rs. 85/- to-cover the costs of his tours. According to the Respondent the person who worked for him was not the Congress worker, much less the Patel. He was another Birju Gond, who was introduced to him by the workers of Respondent No. 1. Birju Gond, the Patel, was not called. P.W. 3 Ahmad Khan, the present Patel of Udepani, and Dallu, a resident of Udepani, have admitted that there is another person by name Birju Gond, who resides in Bijaypani, a suburb of Udepani. The villages—Udepani and Bijaypani—are adjacent to each other. Ex. P-72 is the receipt, said to have been passed by Birju Gond of Udepani for receiving Rs. 85/- as costs for working for Respondent No. 1. P.W. 3 Ahmad Khan has said that the other Gond of Bijaypani is illiterate, suggesting thereby that the receipt filed in the return of Election Expenses by Respondent No. 1 must have been passed by Birju Gond, Patel of Udepani. We are not prepared to accept the evidence of Ahmad Khan in the absence of the person himself who had executed the said receipt.

29. Birju Gond—Patel of Udepani—was available, and should have been produced to state that he had worked for Respondent No. 1 and that he had executed the receipt. We do not see any reason to doubt the testimony of Respondent No. 1 who says that the other Birju Gond worked for him and he paid him Rs. 85/- for which Ex. P-72, the receipt, was passed by him. We hold, therefore, that Birju Gond Patel did not work for the Respondent No. 1.

30. According to the petitioner, Abdul Rahim Khan, Hullu Prasad, Baburao Gadkar, Hardwarilal, Sardarsingh and Tularam Master, members of Nyaya

Panchayat, had worked for the Respondent No. 1. The witness said that Abdul Rahim Khan, Tularam Master and Sardarsingh is that they had told P.W. 17 Abdul Rehman Faruqui, that they were working for Respondent No. 1. The witness had seen Sardarsingh distributing pamphlets like Ex. P-13, 21 and 22. Out of the lot of about 22 witnesses examined for the petitioner, we found this man—P.W. 17 Abdul Rehman Faruqui, to be the most unreliable witness. He was a worker for the petitioner; and we noticed, he was out to speak on every point in support of the petitioner. We are not prepared to put any reliance on his evidence.

31. No evidence has been laid to show that Bajurao Gadkar had worked for the Respondent No. 1. P.W. 5 Nasrulla Khan, resident of village Chhui, and P.W. 14—Saheblal—one of the Respondents, who had admitted practically all the allegations of the petition so far as they were against the respondent No. 1, are the only witness who have given evidence to show that Hulla Prasad had worked for Respondent No. 1. According to them, they had seen Hulla Prasad distributing pamphlets like Ex. P-13, 25 and 26. We were not impressed by the evidence of either of them; and we are not prepared to hold that Hulla Prasad had worked for the Respondent No. 1. The petitioner, has, in our opinion, failed to establish that any one out of the seven persons, who were members of the Nyaya Panchayat had worked for the Respondent No. 1.

32. Murarilal Sarpanch had worked for respondent No. 1, and Toomchand another Panch had worked as his polling agent. Assuming the other panchas such as Hulla Prasad and Sardarsingh had also worked for the respondent No. 1, the matter will not be covered by Section 123(8) of the Representation of the Peoples Act, inasmuch as a Panch or Sarpanch is not in our opinion a person serving under the State. He can in no sense of the terms be taken to be a servant of the State. A panch is either selected from amongst the members of Gram Panchayat or is nominated by the Government. His selection or nomination will not put him into the category of servants. Sub-clause (b) of the explanation added to 123(8) of the Act mentions a number of village officers that are included in the category of persons serving under the State; but in our opinion, a panch who works as an honorary Judge or Magistrate cannot be included in that category. Relationship of a master and servant is not created by the nomination or selection and appointment of a Panch.

33. Besides the Patels and members of the Nyaya Panchayat, who are said to have worked for the Respondent No. 1, Shri Karajgaonkar, a police sub-inspector, who was in charge of the police station at that time, is also said to have canvassed for votes for Respondent No. 1 and to have given a threat to P.W. 23 Harishchandra Mallu—one of the workers of the petitioner. Shri Karajgaonkar entered the witness-box and said that he never canvassed for the respondent No. 1, nor did he give any threat to Harishchandra Mallu. There is no evidence to show that Karajgaonkar had at any time canvassed for votes for Respondent No. 1. According to P.W. 23, Harishchandra Mallu, Shri Karajgaonkar had once threatened him not to work so zealously for the petitioner. Harishchandra Mallu is the proprietor of a Bus Transport Co., of Seoni, and on a day, about 6 days before the date of polling, he was going in his bus, when he met Karajgaonkar at Bhoma; and there the police Sub-Inspector is said to have given him the said threat. Karajgaonkar has denied this. Karajgaonkar may or may not have said anything to Mallu at that time; but at any rate, it is certain that he did not canvass for respondent No. 1.

34. Another ground on which the election of the returned candidate has been questioned by the petitioner is that a systematic appeal to vote on grounds of community to Gond and Gadhwel voters was made; and use of national symbols (Ex. P-15) was made for the furtherance of the prospects of the election of Respt. No. 1. Ex. P-34 was the pamphlet issued by P.W. 7 Mangroo Secretary of Admit Jati (Gond) Mahasabha of Nainpur. It is mentioned in the pamphlet that in the convention of the Mahasabha, held at Nainpur, it was resolved that members of Adhimjati i.e. of backward class, such as Gond etc., should vote for the Congress.

35. Mangroo (P.W. 7) has admitted that such a resolution was passed in the convention; and that he had distributed the pamphlets. His own son Vasantrao, who is also a signatory to the said pamphlet, was one of the Congress candidate contesting election to the Reserved seat in another constituency of the district. It is, no doubt, true that Mangroo had asked Gond voters to vote for the Congress, because the Mahasabha of the community had so decided; but we are not prepared to call it a systematic appeal to vote on ground of community. Mangroo is the Secretary of the Admit Jati (Gond) Mahasabha; and his community decided to

support the Congress. He, therefore, asked his own man to vote for the Congress Candidate. That does not, in our opinion, amount to a systematic appeal to vote for a particular candidate on grounds of community caste or religion.

36. Similarly, Ex. P-21 was another pamphlet issued by Murarilal, President of Gadhewal Samaj of Pandiya Chhapara, asked the voters of that community to vote for the Congress. Asking members of a particular community to vote for the Congress candidate does not, in our opinion, amount to a systematic appeal to vote on ground of community. Members of the community were not asked to choose the candidate of their own caste or religion in preference to other candidates.

37. Ex. P-15, the poster containing picture of Mahatma Gandhi and Jawaharlal Nehru was published. We have already considered this pamphlet in connection with the allegations whether any false statement affecting the conduct of the petitioner, was made by the Respondent No. 1 or his Agents. We have now to consider this poster to decide if it amounted to the use of a national symbol in furtherance of the prospects of the returned candidate. The poster contains the picture of Mahatma Gandhi on the right top corner with folded hand; and on the left side top is the Red Fort at Delhi, on which Pt. Jawaharlal Nehru is standing with the Congress Flag in his hand. There is a ladder by which it is indicated that Pt. Jawaharlal Nehru and his followers could reach the Red Fort. It is also mentioned in the pamphlet that it was through this ladder of Congress that the nation could reach that degree of progress, and the same ladder will lead to further progress; and, therefore, the voters were asked to vote for the Congress.

38. It is known to everyone that Mahatma Gandhi died in January 1948. Although Mahatma Gandhi had not been a member of the Congress Organisation since 1937, he was undoubtedly its guide and philosopher. Congress dared not do an act to which Mahatma Gandhi was opposed. He was in a sense, the very life, strength and glory of the Congress. Picture of Mahatma Gandhi may to some extent be said to be a Congress Symbol; but we are not prepared to call it a national symbol in the sense in which the word is used in Section 124 of the Representation of the Peoples Act. Exhibition of the poster like Ex. P-15 cannot, therefore, be said to be use of national symbol for furtherance of the Election of the Congress candidate.

39. The other malpractices said to have been committed by the respondent or his Agents were:—

- (1) Shri K. P. Tiwari, entered into Polling compartments at the polling stations at Kanhiwada and Bhoma.
- (2) There was canvassing within the prohibited area of 100 yards.
- (3) Interference by Shri K. P. Tiwari, Additional Deputy Commissioner, Seoni, in the polling booths at Kanhiwada; and
- (4) There was a meeting held by Congress workers within the prohibited area of 100 yards of Polling Station.

There is not an iota of evidence to show that Shri K. P. Tiwari had entered into the polling compartment. None of these practices amount to major or minor corrupt practices as defined in the Act. Canvassing for votes within 100 yards of the polling station or holding of meetings has been prohibited. (See Sections 130-136) and made an offence under the Representation of the People Act. One such complaint was made against one Ramkhilawansingh and it has resulted in his acquittal, as it was found that he had not canvassed or held any meeting within 100 years of the polling station.

40. P.W. 8, Dr. Prakash of Seoni had noticed one Tejilal at Keolari polling station, going to the polling booth with a number of women voters. If Tejilal had brought voters to the polling Station, it was the look out of the Presiding Officer to have taken action against him. He was not a worker of Respondent No. 1 nor was his Agent; and the Respondent No. 1 cannot be held liable for what an outsider like Tejilal did on that particular day. Tejilal is not a party to these proceedings and is not reported to be an influential worker for any organisation; and we do not think it necessary to make any order disqualifying him under Section 142 of the Act; and, therefore, it is not necessary to consider the question any further.

41. According to the petitioner, Shri K. P. Tiwary, Additional Deputy Commissioner, Seoni had interfered with the polling at Kanhiwada. We think, Shri Bose, Civil Judge, Seoni, who was the Presiding Officer in the Booth at Kanhiwada, had given a satisfactory explanation for the presence and activities of Shri Tiwary at the polling Booth. According to Shri Bose, there was a great rush of voters

in his room during the last hour of polling. He came out; and noticed 40-50 persons, who had come within the area of 100 yards; and he says, he had therefore, requested Shri Tiwary to help him to give chits to the voters after ascertaining their numbers from the voters-list, so that all those who had come to the polling station could be able to cast their votes. The polling booth was located in a school building at Kanhiwada and in the verandah out-side the room of the Presiding Officer, were sitting two or three Patwaris with voters-lists. The voters came to the Patwaries and asked for their serial number in the list. After the serial No. was noted by the patwari on a chit, the voter came to the Presiding Officer, where either of his two polling officers made enquiries from the voter and after being satisfied that he was the right man, issued him a ballot paper. As there was great rush in the evening, the patwaris were unable to find out the names of voters, who had collected at the booth. Shri Tiwary, therefore, took one of the voters-list and asked Lajpat, I.R.W. 4 to read the names therein loudly; and whenever a person responded to the name called out from the list he was given a chit and he then proceeded to the Presiding Officer. This was all that was done by Lajpat and Shri Tiwary at that time.

42. There was no force in the contention of the petitioner that Lajpat and Shri Tiwary had influenced the voters. Lajpat entered the witness-box and said that he had not influenced voters or canvassed for votes but had only helped Shri Tiwary as was said by Shri Bose in his evidence. All that Lajpat and Tiwary did at that time was to assist the Presiding Officer by helping the remaining voters who had arrived there to cast their votes; and it cannot be said to be an act of interference at the Polling Station. There is no satisfactory evidence to hold that any one had held any meeting on the day of polling.

43. According to the petitioner, the Return of Election expenses, filed by the Respondent No. 1 was false, because the Return did not contain the expenses incurred by the petitioner in printing and publishing the following pamphlets:—

- (1) The poster—Ex. P-15.
- (2) Pamphlet—Ex. P-13.
- (3) Pamphlet—Ex. P-21.
- (4) Pamphlet—Ex. P-22.
- (5) Pamphlet—Ex. P-33 and lastly,
- (6) one poster showing Pt. Jawaharlal Nehru appealing to voters to vote for the Congress, supplied by the All India Congress Committee.

According to the Respondent No. 1, he had not printed or published any of these leaflets or posters. They were published by the District or Provincial Congress Committee, for which the latter had incurred the expenses; and, therefore, the Respondent did not and could not show those expenses in his Election Return. The Respondent No. 1 has stated from the witness box that posters like Ex. P-15 were received by him from the Provincial Congress Committee and they were published. Ex. P-13 was printed and published by the District Congress Committee, Seoni. Ex. P-22 was published by the Secretary to Adim Jati (Gond) Mahasabha, Nainpur. Ex. P-21 was published by Murarilal, President of Gadhewal Samaj. Ex. P-33 is a pamphlet that was printed and published by one Syed Jefar Hassan of Seoni.

44. The Respondent No. 1 has stated that he did not know till he had seen the pamphlet (Ex. P-33) in Court that such a pamphlet was published by Jafrul Hasan. The Respondent did not incur any expenditure on that account. As none of the pamphlets mentioned in the petition were either printed or published at the instance or at the cost of the petitioner, he naturally did not incur any expenditure on that account and, therefore, did not include it in his Return of Election expenses. The petitioner has, in our opinion, failed to establish that the Return of Election expenses filed by the Respondent No. 1 was false on any account. No candidate who is a member of an organisation is expected to know or include in the Return of Election Expenses, the expenditure incurred by such organisation for the furtherance of the prospects of the election of candidates supported by such organisation. This principle has been recognized by law. (See explanation under Sub-Section 1 of Section 125 of the Representation of the Peoples Act.). The return submitted by the respondent No. 1 cannot, therefore, be regarded as false and the respondent cannot be held guilty of any illegal practice.

45. In the view of the case we have taken the election petition fails and is dismissed. The petitioner will pay the costs of the respondents and bear his own. Fee for counsel will be Rs. 250.

(Sd.) N. H. MUJUMDAR, Chairman.

(Sd.) M. M. MULLNA, Member.

(Sd.) G. A. PHADKE, Member.

The 20th February, 1953.

SCHEDULE OF COSTS

ELECTION CASE No. 3 OF 1952

Shri Naraindass.....vs.....Shri Manohar Rao.

	For Petitioner	For Respondent No. 1	For Respondent No. 3	For Respondent No. 4	For Respondent No. 5
	Rs. As. Ps.	Rs. As. Ps.	Rs. As. Ps.	Rs. As. Ps.	Rs. As. Ps.
1. Publication charges	484 4 0	...	...	...	...
2. Stamp for Power	2 0 0	1 0 0	1 0 0	3 0 0	1 0 0
3. Stamp for applications and affidavits.	8 0 0	2 0 0	2 0 0	...	...
4. Pleader's fees	...	250 0 0	...	...	...
5. Stamp for service of processes.	28 0 0	6 12 0	...	6 0 0	...
6. Subsistence for witness- es.	249 11 0	139 12 0	...	74 8 0	...
7. Stamps for documents	60 6 0	3 10 0	...	...	...
TOTAL . .	832 5 0	403 2 0	3 0 0	83 8 0	1 0 0

(Sd.) N. H. MUJUMDAR, *Chairman*  
[No. 19/289/52. Elec.III.]

**S.R.O. 394.**—WHEREAS the election of Sardar Mihan Singh and Sardar Gian Singh, as members of the Legislative Assembly of the State of Patiala and East Punjab States Union from the Amloh-Payal Constituency of that Assembly, has been called in question by three election petitions duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Sardar Mohinder Singh, son of Sardar Sampuran Singh, Village Hamayanpur, Thana Sirhind, Tehsil Bassi, District Fatehgarh Sahib, Shri Gurdial Singh, son of Sardar Bakhtawer Singh, Village Dhamet, Tehsil Payal, District Fatehgarh Sahib (Bassi), and Shri Kanwar Sain Saronwala, Pleader, son of Shri Lachhmi Chand, resident of Amloh, Police Station, Tehsil Amloh, District Fatehgarh Sahib;

AND WHEREAS, the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petitions has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order.

BEFORE THE ELECTION TRIBUNAL, PATIALA

V. B. Sarwate—*Chairman*.

Raghunandan Saran—*Member*.

E. M. Joshi—*Member*.

ELECTION PETITION No. 69 OF 1952

S. Mohinder Singh, s/o S. Sampuran Singh, resident of village Hamayanpur, Thana Sirhind, Tehsil Bassi, district Fatehgarh Sahib—*Petitioner*.

*versus*

1. S. Mihan Singh, v. Rajgarh, P.O. Duraha Mandi, Tehsil Payal, district Fatehgarh Sahib.
2. Gian Singh s/o Rattan Singh, v. Rara, Post Office Ghurani Kalan, tehsil Payal.
3. Bhagat Singh s/o Mohan Singh v. Bassi, tehsil Bassi, district Fatehgarh Sahib.
4. Bhagwan Singh s/o Surja Singh, v. Mustfabad, tehsil Bassi, district Fatehgarh Sahib.

5. Inderjit s/o Lachhman Dass, v. Payal, tehsil Payal.
6. Kartar Singh s/o Ganda Singh, v. Lasoi, tehsil Payal.
7. Mohan Singh s/o Tarlok Singh, v. Jargari, tehsil Payal.
8. Mohinder Singh s/o Nehal Singh, v. Jargari, tehsil Payal.
9. Roshan Lal s/o Gulab Rai, v. Amloh, tehsil Amloh.
10. Tarlok Singh s/o Kirpa Singh, v. Bassi, tehsil Bassi.
11. Tehal Singh, Advocate, s/o S. Dhanna Singh, Behra Road, Patiala.
12. Nachhatter Singh s/o Rora Singh, Lasara-village, tehsil Payal.
13. Kaur Sain s/o Lachhman Chand, v. Amloh, tehsil Amloh.
14. Gurdial Singh s/o Bakhtawar Singh, v. Dhamot, tehsil Payal.
15. Nand Singh s/o Kehnu Ram, v. Amloh, tehsil Amloh.
16. Hazara Singh s/o Ram Singh, Alladad Pur-village, tehsil Amloh.
17. Mahain Singh s/o Jagat Singh, v. Hamayonpur, tehsil Bassi.
18. Ishar Singh s/o Randhir Singh, v. Malipur, tehsil Payal—*Respondents.*

#### ORDER

*Delivered on 21st February 1953*

The Amloh-Payal Constituency returns two members to the PEPSU Legislative Assembly—one seat being reserved for the scheduled castes. In the last general election the respondents and this petitioner Mohinder Singh had sought nomination. The nomination papers of Mohinder Singh, Kanwar Sain and Gurdial Singh were, however, rejected by the Returning Officer. In the result S. Mihan Singh was declared elected in the reserved seat and S. Gian Singh Rarewala in the general seat from this constituency.

2. Three election petitions have been filed calling in question this election. In this petition No. 69 Mohinder Singh, who belongs to the scheduled castes, claims a declaration that the election of both the returned candidates is wholly void on the ground of the improper rejection of the petitioner's nomination paper. Another petition No. 148 is by Gurdial Singh, who seeks a similar declaration on the ground of the alleged improper rejection of his own nomination. He has also made allegations in para. 11 of his petition about the return of election expenses filed by S. Gian Singh, Rarewala being false in some particulars and the declaration made therein being untrue. The third petition No. 150 is by Kanwar Sain, who also seeks to avoid the entire election on the ground of improper rejection of his own nomination. All the three petitions were tried together, and this order governs the disposal of them all.

3. All the petitions have been contested by the two returned candidates. In their written statements they generally asserted that the orders rejecting these nominations were proper. In the case of the petitioner Gurdial Singh, it has been urged that he was disqualified for being chosen because he was Lambardar of V. Ferozepur Gausiwalal. To this Gurdial Singh's reply was that he had resigned that office before his nomination and that in any case this objection not having been taken before the Returning Officer could not now be urged for justifying the order of rejection. The respondent Mihan Singh has made an allegation against the petitioner Mohinder Singh that the nomination papers filed on his behalf had been subscribed to by the proposers and Seconders on a mis-representation that the person to whose nomination they were assenting was another man Hazara Singh and the nomination papers were, therefore, liable to be rejected as having been obtained by misrepresentation or fraud. Mohinder Singh's reply to this is that this allegation is false and untenable.

4. The issues arising out of the pleadings in the three petitions are the following:—

1. (a) Had the petitioner Gurdial Singh resigned his office as Lambardar of V. Ferozepore alias Gausiwalal at the time of his nomination? If not, was he disqualified for seeking election to the State Assembly?
- (b) Can the respondents be allowed to urge the above disqualification for justifying rejection of Gurdial Singh's nomination though this was not the objection taken at the time of scrutiny?
2. (a) Does respondent Mihan Singh prove that the proposers and seconders to the nomination of Mohinder Singh petitioner had been induced by mis-representation or fraud to put their signatures on the nomination papers intended for nomination of Hazara Singh?

(b) In respect of which of the four nomination papers filed on behalf of Mohinder Singh is the above stated allegation of mis-representation or fraud proved?

(c) Can the respondents urge the above as a good ground for rejection of Mohinder Singh's nomination though such ground was not taken at the time of scrutiny of the nomination?

3. Was the omission to mention the name of the Electoral area in the nomination papers of Mohinder Singh sufficient in law to warrant their rejection?

4. Was the nomination of any of the following persons improperly rejected:—

- (1) Mohinder Singh Petitioner of Election Petition No. 69.
- (2) Kanwar Sain, Petitioner of Election Petition No. 150.
- (3) Gurdial Singh, Petitioner of Election Petition No. 148.

5. Did the improper rejection of the nomination as may be found established, materially affect the result of the Election in respect of the reserved seat or the General seat or both?

6. Is the election liable to be declared as void and in what respects and to what extent?

7. Does the petitioner Gurdial Singh establish the allegations in para. 11 of his petition and make out any case of corrupt or illegal practice on the part of respondent S. Gyan Singh sufficient to merit disqualification under S. 140 of the Representation of the People Act, 1951?

8. What is the appropriate orders to be made on each of the three election petitions under Sections 98 and 99 of the Representation of the People Act, 1951?

5. The returning officer of this constituency rejected the nominations of as many as three candidates and, as we shall presently point out when we consider his orders individually, his grounds of rejection in every case were entirely untenable. We cannot restrain ourselves from making a general observation that in dealing with these nominations in what appears to be an irresponsible manner, the returning officer clearly over-looked, if he did not deliberately ignore, the rule of caution in S. 36(4) of the Representation of the People Act that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. He also seems to have been unmindful that his function in scrutiny is quasi judicial in character, otherwise he would not have acted arbitrarily as he did. No objection to these nominations appears to have been taken by the other candidates, and before us the respondents have not even attempted to argue that the rejections were sustainable on the grounds given by the Returning Officer. If in one case we find the rejection not to have been improper, it is on the consideration of a new ground of disqualification of the candidate which was not present to the mind of any one concerned at the time of the scrutiny. We do not know whose interest the Returning Officer thought he was going to serve by these improper rejections, but when the law is so definite that an improper rejection results in the avoidance of an election wholly, even those in whose interest he may have done this might have wished they had been saved from such friend. What an amount of care, trouble and money will have gone waste not only on the part of the Government but also of the candidates when the election is set aside, we need hardly point out. We understand that legislation will soon be afoot to provide for an appeal against rejection of nominations in order that all nominations should be rendered conclusive before the electorate goes to the polls to make a choice out of the candidates. This will help to save the candidates from the effects of such capriciousness of the Returning Officers.

6. *Issue No. 1.*—Gurdial Singh's nomination was rejected by the Returning Officer for the only reason that "the date on the declaration of the choice of symbols is not given in the nomination paper". Two other declarations which appear in the same place on the form of nomination paper bear date 24th November 1951 and when the paper was presented to the Returning Officer the same day with the candidate's signature duly made under the declaration of the choice of symbols it is obvious that the declaration should be deemed to be duly made before the filing of the nomination. This is all what the law contemplates as necessary and the omission to write the date once again was immaterial. This reason for rejection was so unsubstantial that the respondents' counsel at once stated that he could not support the rejection on that ground.

7. The respondents sought, however, to justify the rejection on a new ground that Gurdial Singh being lambardar of a village Ferozepore in PEPSU was disqualified for being chosen as member of the PEPSU Assembly. Under article 191 of the Constitution a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by Law not to disqualify its holder. The petitioner Gurdial Singh was admitted by a lambardar of Dhamot and Ferozepore villages, but he stated that before the date of nomination he had resigned from this office in respect of both the villages. It appears, however, that the letter of resignation which he sent referred to Dhamot only. That was accepted and his son was appointed lambardar of Dhamot in his stead. That was not and could not be treated as a resignation from the Lambardari of Ferozepur that being treated as a separate office; and Gurdial Singh admits before us that since he learnt that he continues to be recorded Lambardar of Ferozepore he has continued to act as such also. A Lambardar is a village official who is remunerated by the Government and is a person who is clearly disqualified to seek an election. The Tehsildar of Tehsil Payal, in which the villages Dhamot and Ferozepore are included, produced before us the Register of Lambardars of Tehsil Payal, which still records the petitioner Gurdial Singh as Lambardar of Ferozepore. The appointment of Lambardar is made by the Collector and the remuneration payable is 5 per cent. of the land revenue collected through him and this is paid from the Government Treasury. The respondent has also filed a certified copy of a circular letter dated 29th November, 1951 from the Chief Electoral Officer, PEPSU, in which he had pointed out that Lambardars and Zal'dars were not eligible for election. The counsel who argued for the petitioners conceded that this letter was right in the view that a Lambardar as a holder of office of profit under the State Government was disqualified under the Article of the Constitution quoted above. This being a statutory disqualification the rejection can be sustained on this ground now though it was not taken before the Returning Officer, and we answer the 1st issue in the affirmative.

8. Issue No. 2.—Mohinder Singh petitioner filed four nomination papers, which are on the file of his nomination papers Ex. P. 3. The proposer and the seconder in the 1st were Salig Ram and Nanak Chand respectively. Those in the second were Banarsi Dass and Dharam Dev. The other two nomination papers were identical and may be treated as one and in it the proposer and seconder were Lachhman Dass and Lekh Ram respectively. The objection taken by the Respondent Mihan Singh before us in respect of these nomination papers is that the proposers and seconders did not in fact mean to nominate the petitioner, and it was by misrepresentation that the papers would be used for nomination of Subedar Hazara Singh that they subscribed to them in blank. This Hazara Singh himself, one of the Respondents, says that he had obtained the signatures of some persons from Gobind Garh as proposers and seconders on some forms of nomination with the idea of using them for his own candidature through one Dharam Dev and that when Mohinder Singh casually asked him to show forms of nomination papers, he delivered two out of such papers to him. His evidence is vague in the extreme and there is no corroboration to it. Hazara Singh does not say whose signatures were on the papers that he thus gave to Mohinder Singh or if there were any signatures at all. Nothing can be made of such evidence and the counsel for the respondents conceded in argument that in the face of the evidence given for the petitioner by Nanak Chand, Banarsi Das and Lachhman Das, he could not urge that this plea of Mihan Singh had been proved. The plea was not taken before the Returning Officer and before us as it was taken at a later stage. We have no doubt that it is without substance and so rule it out.

9. Issue No. 3.—All the nomination papers of Mohinder Singh were rejected by the Returning Officer by an order dated 1st December, 1951. The order reads as follows:—

"Nomination paper of Mohinder Singh s/o Sapuran Singh, age 35 years, of village Hamayanpore, P.O. Sirhind Mandi, District Fatehgarh Sahib, is rejected because the name of the constituency and area of the proposer and seconder is not given in the nomination paper."

10. The petitioner's comment of this order is that it is meaningless and ambiguous. We also find difficulty in making any sense out of it, because as we see all the necessary particulars have been given in the nomination papers. On behalf of the respondents No. 1 and 2 it was stated that what the

Returning Officer meant was that the electoral area of the proposers and seconders was not given. We have minutely considered all the relevant provisions and critically scrutinized the nomination papers to see if they were really deficient in this or any other respect. Rule 7 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950 empowers the Electoral Registration Officer to devide a constituency into electoral areas for the purpose of facilitating the preparation of the electoral roll for the constituency and provides that so much of the roll as relates to an electoral area may be separately prepared. Note (6) of the prescribed form of Nomination Paper says that where the electoral roll is sub-divided into parts and separate serial numbers are assigned to the electors entered in each part, a description of the part in which the name of the person concerned is entered must also be given in items No. 8, 10 and 14 of the Nomination paper. We may mention that item No. 8 of the nomination paper relates to the candidate, item No. 10 to his proposer and item No. 14 to his seconder. In this case we are concerned with items No. 10 and 14 only, because the Returning Officer, if we understand him right, has said that he discovered a flaw in them. We have not found any omission in the nomination papers of the name of the constituency, in the electoral roll of which the names of the proposers and seconders are registered. Under the law the proposers and seconders had to be of the Amloh-Payal Constituency, for which the nomination papers were filed, and they were of this constituency, and the name of this constituency was already mentioned in item No. 1 of the nomination papers.

**The petitioner Mohinder Singh no doubt belonged to another constituency Sirhind, but the name of that constituency, too, was properly given in item No. 7 of the nomination papers.**

11. The only question then remains if the electoral area of any proposers and seconders was not mentioned in the nomination papers. On an examination of the nomination papers we find that they are not vitiated by any such defect. Evidence has been given to show that all the proposers and seconders are residents of village Gobindgarh in the Amloh-Payal Constituency. For the preparation of the electoral roll of this constituency this Gobindgarh was treated as a separate electoral area. The separate electoral roll for it with its supplement is produced before us (Ex. P. 4 and P. 5). Out of the six proposers and seconders Salig Ram, Nanak Chand, Banarsi Dass, Dharam Dev and Lekh Ram are named in the main list Ex. P. 4 at Nos. 410, 771, 39, 417, and 122 respectively, and in items No. 10 and 14 of the nomination papers the serial number of the proposer or seconder concerned is correctly mentioned along with the electoral area, 'village Gobindgarh'; the name of Lachhman Dass proposer is entered at No. 28 in the supplementary list Ex. P. 5, and in his case not only his serial number and village Gobindgarh are mentioned in the nomination paper, but also the fact of his name being entered in the supplementary list is mentioned. Thus all the information required by law to be given in respect of the proposers and seconders was stated with meticulous care in the nomination paper. This being so, we feel surprised at the order of the Returning Officer rejecting the nomination papers of Mohinder Singh which the respondents' learned counsel also frankly conceded to be indefensible. We find that the rejection of the nomination of Mohinder Singh was not only improper but also quite arbitrary and perverse.

12. Issue No. 4.—Being left now with the examination of the nomination of the petitioner Kanwar Sain we find that he had filed 3 nomination papers, all of which were rejected by the Returning Officer by an order which runs as follows:—

"Nomination paper of Kanwar Sain, Son of Lachmi Chand age 51 years, of village and post office Amloh (PEPSU) is rejected because the name of the constituency of the proposer and the seconder is not given in any of the nomination papers filed by the candidate."

Here again the deficiency according to the Returning Officer was in the entries against items Nos. 10 and 14 of the nomination form. It is not requisite that the name of the constituency should also be mentioned in cols. 10 and 14. It is required to be given against item No. 1 and there this has been properly mentioned as Amloh-Payal Constituency. All that the items 10 and 14 in the nomination paper require is that the serial number of the proposer or the seconder in the electoral roll of the constituency should be stated. This is considered sufficient for the obvious reason that the name of the constituency being mentioned in item No. 1 and it being necessary that the proposer and the seconder should be electors from that constituency, the serial numbers

which are entered against items 10 and 14 would necessarily be related to the constituency named in item 1. We consider here the one form out of the three, which is sheets Nos. 2-4 in the file of Kanwar Sain's Nomination Ex. P. 4, because this form is complete in all respects including form 5-A for appointment of Election Agent. This form 5-A did not accompany the other two nomination papers, and it might have been possible to urge that those two forms could have been rejected for this deficiency if not for the reason given by the Returning Officer.

13. As already pointed out, in this constituency separate electoral rolls are prepared for the electoral areas comprised in it, and the proposer and seconder of this form are registered in the roll of village 'Amloh'. In the nomination paper in col. 10 the proposer's serial No. is given as '218 Amloh' clearly indicating that this serial number will be found in the electoral roll for Amloh. Similarly the seconder's serial No. is given as '410 Amloh'. The names of the proposer and seconder are found at those serial numbers in the electoral roll for Amloh, which is produced before us. We thus find that the nomination paper was perfectly valid, and its rejection by the Returning Officer was improper.

14. Issue No. 7.—No attempt has been made to substantiate the allegations of the petitioner Gurdial Singh in respect of the return of election expenses of S. Gian Singh Rarewala, and in the arguments it was stated on his behalf that this contention may be treated as abandoned. We accordingly find issue No. 7 in the negative.

15. Issues Nos. 5 and 6.—This brings us to the consideration of the question as to how the election should be treated now in view of our findings that the nominations of two candidates at least were improperly rejected. We do not find it necessary to elaborate this point because on both sides it was taken for granted in this case that the settled law about there being a presumption of the election being materially affected by an improper rejection of nomination must take effect. The learned counsel appearing for the respondents conceded that the provision now enacted in S. 100 (I) (c) of the Representation of the People Act, 1951 has always received judicial interpretation that on the finding of improper rejection of a nomination, there arises a presumption that the result of the election is materially affected and that there is not any case in which this position has been held to be doubtful. Though the presumption is not unrefutable, the difficulty of giving such legal evidence as could satisfy the conscience of the court that in a particular case the election was not so affected would be great. The difficulty was all the greater in this case because of the fact that this in double member constituency one improperly rejected candidate was eligible in the general and the other in the reserved seat. It is not possible therefore to imagine, to say nothing of finding definitely, how the election of each of the returned candidates might have proceeded with these two rejected candidates also in the contest. Not only was it likely that some voters who did not actually come to the polls might have been brought through their efforts. But also some of those who actually voted for the other candidates including those returned, might have given their votes to one or the other of these two, with the possibility that the votes polled by each of the returned candidates could be affected. Since every elector had two votes, he could use one to satisfy his predilections about voting for a candidate of a particular party, community or profession. Still he would be left with a second vote which might be given to another candidate, who appealed to him as best entitled to his support—irrespective of the above considerations. Nothing has been proved by the respondents to show how the improperly rejected candidates did not stand any chance of affecting the votes polled by the returned candidates. On the other hand the petitioners have shown in their evidence that at least one of them was associated with the congress organisation for a number of years and they had to their credit political and public life and social service which would have made them inconvenient rivals to the returned candidates. It fact they suggest this to have been the reason behind their elimination from the contest by this mode of arbitrary rejection of their nominations through the agency of the Returning Officer. Mohinder Singh was a nominee of the congress for the reserved seat. He was president of the District Congress Committee and a member of the State Congress Committee, also President of the Sirhind Small Town Committee, of the Depressed Classes League and of the Weaver's Industry Co-operative Society. Kanwar Sain who would be a candidate in the general seat is a legal practitioner of about 25 years standing, having a good clientele in the constituency, is Vice President of Amloh small Town Committee, and had been working in the cause of the

displaced persons and the Harijans. All this would make for influence popularity with the people and might have stood them in good stead with the electorate. The returned candidates might have found in them opponents who were not to be despised or lightly reckoned with.

16. The learned counsel for respondents only drew our attention to the fact that the number of votes polled by the two returned candidates was appreciably larger than those polled by the other candidates who were in the contest. He pointed out that out of about 75,000 votes which were polled, S. Gian Singh, Rarewala, had secured 23,602 and Mihan Singh 21,408. He then argued that the electorate had thus shown a marked preference for these two candidates over all the others and that we should therefore infer that with the two improperly rejected candidates also in the field, there was no chance of the votes secured by the returned candidates being appreciably reduced and that all that these two persons could hope for was to divide the votes polled by the defeated candidates. By this process, he desired us to find in this case that the presumption was rebutted and that actually the result of the election would have remained much the same. We are unable to follow this reasoning and think that it is based more on wishful thinking. It requires us to enter into the realm of speculation without proving why it could be supposed that the electors would not have preferred the two improperly rejected candidates to both or any of those returned. There is not only this consideration but there are others as well which may point to a possibility of the result being otherwise than it actually was—for instance these candidates might have induced the large number of nearly 25,000 voters who did not come to the polls to cast votes in their favour and they might have secured for themselves the votes which went to other candidates which again were more than the votes of any of the returned candidates. If we embark on speculation, we cannot ignore the chances of all such permutations and combinations which can negative the theory of the result remaining unaffected. Thus without going through the process of election again, one cannot be sure how the votes would be cast in favour of each candidate including the improperly rejected once and the presumption that the election is materially affected must, therefore, be considered to remain unrebuted. We must, therefore find that the result of the election has been materially affected by improper rejection of either of the two nominations in this case.

17. *Issue No. 8.*—In the result, therefore, the petition of Gurdial Singh must be dismissed, while on the petitions of Mohinder Singh and Kanwar Sain there should be a declaration that the election is wholly void. The petitions were occasioned by the arbitrary action of the Returning Officer for which the respondents are not shown to have been responsible. Gurdial Singh's petition comes to be dismissed upon a ground which was not taken before the Returning Officer. In the circumstances we think the appropriate order about costs would be to leave the parties in each case to bear their own as incurred.

18. On this petition of Mohinder Singh No. 69 we declare that the election in the Amloh-Payal Constituency of the PEPSU Legislative Assembly is wholly void. The parties will bear their own costs as incurred.

(Sd.) V. B. SARWATE, Chairman.

(Sd.) E. M. JOSHI, Member.

(Sd.) RAGHUNANDAN SARAN, Member.

*The 21st February, 1953.*

#### BEFORE THE ELECTION TRIBUNAL, PATIALA

V. B. Sarwate—Chairman.

Raghunandan Saran—Member.

E. M. Joshi—Member.

#### ELECTION PETITION No. 148 OF 1952.

Gurdial Singh s/o S. Bakhtawar Singh, resident of V. Dhamot Teh. Payal, district Fatehgarh Sahib (Bassil)—Petitioner.

*Versus*

1. S. Gian Singh s/o S. Rattan Singh V. Bara, P.O. Payal, Tehsil Payal, district Fatehgarh Sahib. (Bassil).
2. Mihan Singh s/o Sadhu Singh, V. Rajgarh, P.O. Doraha, Teh. Payal, district Fatehgarh Sahib, (Bassil).

3. Bhagat Singh s/o Mohan Singh of V. & P.O. Bassi, district Fatehgarh Sahib, (Bassi).
4. Bhagwan Singh s/o Sauja Singh V. & P.O. Mustafabad, Teh. & Distt. Fatehgarh Sahib, (Bassi).
5. Inderjit s/o Lachhman Dass V. & P.O. Payal Teh. Payal, distt. Fatehgarh Sahib, (Bassi).
6. Kartar Singh s/o Ganda Singh V. Lasoi, P.O. Jarag, Teh. Payal, distt. Fatehgarh Sahib, (Bassi).
7. Mohan Singh s/o Tarlok Singh V. Jaragari, P.O. Jarag, Teh. Payal, distt. Fatehgarh Sahib, (Bassi).
8. Mohinder Singh s/o Nihal Singh V. Jaragari, P.O. Jarag, Teh. Payal, distt. Fatehgarh Sahib, (Bassi).
9. Roshan Lal s/o Gulab Rai V & P.O. Amloh, distt. Fatehgarh Sahib, (Bassi).
10. Tirlok Singh s/o Kirpal Singh V & P.O. Bassi, distt. Fatehgarh Sahib, (Bassi).
11. Tahir Singh s/o Dhanna Singh, Bahera Road, Patiala.
12. Mohinder Singh s/o Sampuran Singh V. Hamaunpur, P.O. Sirhind, Mandi, distt. Fatehgarh Sahib, (Bassi).
13. Kaur Sen s/o Lachhman Chand V. P.O. Amloh, district Fatehgarh Sahib, (Bassi).
14. Nichhitar Singh s/o Rura Singh V. Lasara Lakhubass, P.O. Dhamot, distt. Fatehgarh Sahib, (Bassi).
15. Nand Singh s/o Kanu Ram V. & P.O. Amloh distt. Fatehgarh Sahib, (Bassi).
16. Hazara Singh s/o Ram Singh V. Aladadpur, P.O. Amloh, distt. Fatehgarh Sahib, (Bassi).
17. Mahain Singh s/o Jagat Singh, V. Hamaunpur, P.O. Sirhind, Mandi, distt. Fatehgarh Sahib, (Bassi).
18. Ishar Singh s/o Randhir Singh V. Malipur, P.O. Doraha Mandi, Teh. Payal, distt. Fatehgarh Sahib, (Bassi)—**Respondents**,

### ORDER

Delivered on 21st February 1953

The election petition was tried along with petition No. 69 Mohinder Singh vs. Mihān Singh and others and the order delivered today in that case disposes of this petition also. For the reasons stated in that order this petition is dismissed. No further order that the parties to bear their own costs of this petition.

(Sd.) V. B. SARWATE, Chairman.

(Sd.) RAGHUNANDAN SARAN, Member.

(Sd.) E. M. Joshi, Member,

The 21st February, 1953.

### BEFORE THE ELECTION TRIBUNAL, PATIALA

V. B. Sarwate—Chairman.

Raghunandan Saran—Member.

E. M. Joshi—Member.

#### ELECTION PETITION NO. 150 OF 1952

Kanwar Sain Saronwala, Pleader, s/o Shri Lachhmi Chand, resident of Amloh Police Station, Tehsil Amloh, district Fatehgarh Sahib—  
Petitioner.

#### Versus

1. Gian Singh, s/o Rattan Singh, V. Rara, P.O. P.S. and Tehsil Payal, district Fatehgarh Sahib.
2. Mihān Singh s/o Sadhu Singh, V. Rajgarh, P.O. Doraha Mandi, P.S. and Tehsil Payal, district Fatehgarh Sahib.
3. Mohinder Singh, s/o Nehal Singh, V. Jargarhi, P.O. Jarg, P.S. and Tehsil, Payal, district Fatehgarh Sahib,
4. Roshan Lal, s/o Gulab Rai, V. P.O., P.S. Tehsil Amloh, district Fatehgarh Sahib.

5. Tehal Singh, s/o Dharp Singh Behera Road, Patiala, district Patiala,
6. Inderjit, s/o Lachhman Dass, V. P.O. P.S. and Tehsil Payal, district Fatehgarh Sahib,
7. Kartar Singh, s/o Ganda Singh, V. Lassoie, P.O. Jarg, P.S. and Tehsil Payal, district Fatehgarh Sahib,
8. Bhagat Singh, s/o Mohan Singh Bassi, Ward No. 2, P.S. Bassi, Tehsil Sirhind, district Fatehgarh Sahib,
9. Bhagwan Singh, s/o Sarja Singh, V. Mustafa Abad, P.O., P.S. Bassi, Tehsil Sirhind, district Fatehgarh Sahib,
10. Mohan Singh, s/o Tirlok Singh, V. Jargarhi, P.O. Jarg, P.S. and Tehsil Payal, district Fatehgarh Sahib,
11. Tirlok Singh, s/o Kirpa Singh Bassi, Ward No. 3, P.S. Bassi, Tehsil Sirhind, district Fatehgarh Sahib,
12. Nand Singh, s/o Kheru Ram, V. P.O. P.S. and Tehsil Amloh, district Fatehgarh Sahib,
13. Gurdial Singh, s/o Bakhtawar Singh, V. P.O. Dhamot, P.S. and Tehsil Payal, district Fatehgarh Sahib,
14. Ishar Singh, s/o Randhir Singh, V. Mal Pore, P.O. Doraha Mandi, P.S. and Tehsil Payal, district Fatehgarh Sahib,
15. Mohinder Singh, s/o Sampuran Singh, V. Hamayonpore, P.O. Sirhind Mandi, P.S. and Tehsil Sirhind, district Fatehgarh Sahib,
16. Nachhatar Singh, s/o Ruru Singh, V. Lassara (Lakhovass), P.O. Dhamot, P.S. and Tehsil Payal, district Fatehgarh Sahib,
17. Main Singh, s/o Jagat Singh, V. Hamayon Pore, P.O. Sirhind Mandi, P.S. Sirhind, district Fatehgarh Sahib,
18. Hazara Singh, s/o Ram Singh, V. Aladad Pura, P.O., P.S. and Tehsil Amloh, district Fatehgarh Sahib—Respondents,

#### ORDER

Delivered on 21st February 1953

This election petition was tried along with petition No. 69 Mohinder Singh Vs. Milhan Singh and others, and the order delivered today in that case disposes of this petition also. For the reasons stated in that order, we declare on this petition that the election in the Amloh Payal Constituency of the PEPSU Legislative Assembly is wholly void. We further order that the costs of this petition will be borne by the parties as incurred.

(Sd.) V. B. SARWATE, Chairman.

(Sd.) RAGHUNANDAN SARAN, Member.

(Sd.) E. M. JOSHI, Member.

The 21st February, 1953.

[No. 19/69-148-150/52-Elec.III.]

P. S. SUBRAMANIAN,

Officer on Special Duty.